

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

MARCH 24, 1931, TO DECEMBER 23, 1931

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF DECEMBER 23, 1931

CHARLES W. HUNT, *Chairman*.

Took oath of office June 16, 1924, September 23, 1925,¹ and March 16, 1926.²

WILLIAM E. HUMPHREY.

Took oath of office February 25, 1925.

CHARLES H. MARCH.

Took oath of office February 1, 1929.

EDGAR A. McCULLOCH.

Took oath of office February 11, 1927.

GARLAND S. FERGUSON, Jr.

Took oath of office November 14, 1927, and January 9, 1928.²

OTIS B. JOHNSON, *Secretary*.

Took oath of office August 7, 1922.

¹ Recess appointment.

² Second term.

ACKNOWLEDGMENT

This volume has been prepared and edited by Richard S. Ely, of the Commission's staff.

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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, MARCH 24, 1931, TO DECEMBER 23, 1931

IN THE MATTER OF

MERCERIZERS ASSOCIATION OF AMERICA ET AL.

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

Docket 1755. Complaint, Feb. 5, 1930. Decision, Mar. 24, 1931

Where an association of individuals, partnerships and corporations engaged in manufacturing, mercerizing and processing plied cotton yarns and/or selling same to manufacturers of hosiery, underwear and other garments; and the officers, and members, occupying a dominant and preponderant position in the business concerned, and normally and naturally in competition with one another; in pursuance of a conspiracy to restrict, restrain and suppress competition in sale and distribution of said product at wholesale to garment manufacturers throughout the United States,

- (a) Adopted and fixed uniform prices, terms and discounts to govern sale of said products, and uniform charges for extra processing such as gassing, tinting and bleaching, and generally observed and maintained said prices, etc., and at times made arbitrary advances without respect to the raw cotton yarn market and cost of yarns to them;
- (b) Discussed general business and trade conditions and particularly costs of raw yarns, methods of stabilizing price of mercerized yarns and prices received therefor as disclosed in weekly reports to the association secretary and as reported by customers, and also such so-called trade abuses as price cutting and guarantee against decline in price; and
- (c) Collected weekly reports describing yarn sold by members during preceding week, and price received from domestic and export sales, through statistical bureau duly established by said secretary, and consolidated and disseminated information involved among members and presented same at the regular association meetings for study and discussion thereof;

With effect of substantially lessening, restricting and suppressing competition in sale of mercerized plied cotton yarns throughout the several States and particularly in prices and extra charges quoted and discounts allowed by members and with a tendency to enhance their prices above those theretofore prevailing and which would prevail under normal and open competition:

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

Mr. Everett F. Haycraft for the Commission.

McKercher & Link, of New York City (with whom *Sizer, Chambliss & Sizer*, of Chattanooga, Tenn., for respondent National Yarn & Processing Co.), for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Mercerizers Association of America, a voluntary unincorporated association of individuals, partnerships and corporations engaged in the manufacture, mercerizing and processing, including dyeing, tinting, bleaching and gassing of plied cotton yarns, and in the sale and distribution of the finished products to manufacturers of hosiery, underwear and other garments, and with business office in Washington, D. C.; and the officers, and members of respondent association, engaged, as above set forth¹; with combining or conspiring among themselves and with others to restrict, restrain and suppress competition in the sale and distribution of aforesaid products, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporations, ten in number, and, as alleged, with a dominant and preponderant position in the business concerned and but for the matters and things alleged, naturally and normally in competition with one another and in such competition with others similarly engaged, as charged, "on or about August 1, 1926, entered into an understanding, combination or conspiracy among themselves, and with and through said respondent association, and with others, to restrict, restrain and suppress competition in the sale and distribution of mercerized plied cotton yarns at wholesale to garment manufacturers throughout the United States by agreeing to fix uniform prices, terms and discounts and extra charges for gassing, bleaching, and tinting at which said yarns are sold; and by cooperating with each other in the enforcement and maintenance of such fixed prices, terms, discounts and charges by exchanging information as to prices and charges received for said yarn.

"Pursuant to and in carrying out said understanding, combination or conspiracy, each and all of the said respondent corporations cooperating together and with and through said respondent association, or otherwise, have performed and still continue to perform, among others, the following acts and things":

(a) Adopted and fixed uniform prices, at meetings attended by their representatives in July and August, 1926, "at which they would quote and sell mercerized plied cotton yarns to their customers; also standard terms and discounts to be observed in selling said products; also standard charges for extra processing such as gassing, tinting and bleaching, which said prices, terms, discounts and extra

¹ Set forth in par. 1 of findings, *infra*, p. 4.

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Complaint

charges have been generally observed and maintained by said corporations since that date so that the prices quoted and charged and the terms and discounts allowed customers for their products by said respondent corporations at any and all times since August, 1926, have been substantially uniform and said prices have at times been arbitrarily advanced without respect to the cotton market and the cost of the raw yarns to the said respondent corporations."

(b) Held meetings attended by their representatives, under the auspices of the respondent association, and otherwise, and beginning in June, 1926, and "discussed general business and trade conditions including particularly costs of raw yarns, methods of stabilizing the price of mercerized cotton yarns and the prices which they had received for said yarns as disclosed in weekly reports submitted by said respondent corporations to the secretary of said respondent association; and also at such meetings have discussed so-called trade abuses such as price cutting and false reports from customers as to current prices."

(c) Organized respondent association at a meeting held by them in July, 1926, and in the subsequent month elected respondent Charles R. White, secretary thereof, said respondent White pursuant to authority conferred upon him by respondent corporations and association establishing "a statistical bureau which collected from respondent corporations weekly reports showing the quantity of the yarn sold during the preceding week, a description thereof and the price received from domestic and export sales, said information being consolidated and disseminated by the said Charles R. White to the said respondent corporations each week and presented by him at the regular meetings of said respondent corporations under the auspices of the said respondent association for study and discussion."

The result, as alleged, "of the acts and conduct of the said respondent corporations and the said respondent association, its officers and members, has been and now is to substantially lessen, restrict, and suppress competition in the sale of mercerized plied cotton yarns throughout the several States, particularly in the prices and extra charges quoted and discounts allowed by said respondent corporation; and to enhance the prices of said commodities above the prices which had theretofore prevailed and which would prevail under normal, natural and open competition," and such acts and practices of respondents, as charged, are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission, on the 5th day of February, 1930, issued its complaint against the respondents in which complaint it was charged that said respondents were and had been using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance on the 15th day of April, 1930, and made answer in writing and being desirous of expediting the hearing of said complaint and avoiding the expense incident to the taking of further testimony, entered into a stipulation as to the facts to be taken in lieu of testimony in support of the charges stated in the complaint or in opposition thereto.

Hereupon this proceeding came on for decision, respondents having waived the right to file briefs or present oral argument, and the Commission having considered the record and being advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Mercerizers Association of America, hereinafter referred to as the respondent association, is a voluntary unincorporated association of individuals, partnerships and corporations engaged in the business of manufacturing, mercerizing and processing, including dyeing, tinting, bleaching and gassing of plied cotton yarns, and in the sale and distribution of their finished products, generally known as mercerized plied cotton yarns, to manufacturers of hosiery, underwear and other garments, causing said products when so sold to be shipped from their respective mills and places of business to the purchasers thereof located in other States of the United States and in foreign countries, said respondents being banded together in said association for the purpose of promoting and protecting their common interests and business affairs. The business office of said respondent association is located at 1410 G Street, Washington, D. C., and its officers were at all times herein mentioned:

J. S. VERLENDEN, *president*.

ARTHUR DIXON, *vice president*.

CHARLES R. WHITE, *secretary-treasurer*.

Respondent Aberfoyle Manufacturing Co. is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Chester in said

State, but with branch offices located in the city of Chicago, Ill., Reading, Pa., and Charlotte, N. C., and executive offices in the city of Philadelphia, State of Pennsylvania. It is engaged in the business of manufacturing, processing and mercerizing of cotton yarns and other cotton goods and in the sale and distribution of its finished products to garment manufacturers located throughout the several States, said sales being secured through traveling salesmen who travel throughout the country and through the brokerage house of C. D. Gott, Chattanooga, Tenn.

Respondent American Yarn & Processing Co. is a corporation organized under the laws of the State of North Carolina with its main office and mill located at Mount Holly, in said State. It is engaged in the business of manufacturing, processing and mercerizing of cotton yarns, and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Respondent Belmont Processing Co. is a corporation organized under the laws of the State of North Carolina with its main office and mill located at Belmont, in said State. It was, prior to August 1, 1927, engaged in the business of manufacturing, processing and mercerizing cotton yarn and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through salesmen and brokers.

Respondent Dixie Mercerizing Co. is a corporation organized under the laws of the State of Tennessee with its principal office and place of business located in the city of Chattanooga, in said State. It is engaged in the business of manufacturing, processing and mercerizing cotton yarn and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through salesmen and brokers.

Respondent Johnston Mills Co. is a corporation organized under the laws of the State of North Carolina with its principal office and place of business located in the city of Charlotte in said State. It is engaged in the business of selling mercerized cotton yarn manufactured by the said respondent Spinners Processing Co. and in such capacity sells and distributes said products to garment manufacturers located throughout the several States through agents and traveling salesmen who call upon the trade, causing said products when so sold to be transported from their place of manufacture at Spindale, N. C., to the purchasers thereof located in other States.

Respondent National Yarn & Processing Co. of Tennessee was, prior to February 2, 1929, a corporation organized under the laws of the State of Tennessee with principal office and place of business located in the city of Chattanooga in said State. It was then en-

gaged in the manufacture, processing, and mercerizing of cotton yarns and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Respondent Spinners Processing Co. is a corporation organized under the laws of the State of North Carolina with its principal office and mill located at Spindale in said State. It is engaged in the business of manufacturing, processing and mercerizing cotton yarns and in the sale of the finished product to garment manufacturers located throughout the several States through its exclusive selling agent, respondent Johnston Mills Co. of Charlotte, N. C.

Respondent Clarence L. Meyers, Inc., is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia in said State. It is engaged in the manufacture, processing and mercerizing of cotton yarns and in the sale and distribution of the finished product to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Respondent Standard Coosa-Thatcher Co. is a corporation organized under the laws of the State of Tennessee with its principal office and place of business located in the city of Philadelphia in the State of Pennsylvania. It is engaged in the manufacture, processing, and mercerizing of cotton yarns and in the sale and distribution of finished products to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Said respondent corporations are members of the said respondent association, and in the course and conduct of their several businesses as described herein, have the aggregate capacity of approximately 1,200,000 pounds of yarn per week and occupy a dominant and preponderant position in the business of mercerizing and processing of plied cotton yarns in the United States annually, and but for the matters and things hereinafter alleged and set out would naturally and normally be in competition with each other in price and otherwise, and are in such competition with other individuals, partnerships and corporations, which are not members of the said respondent association, engaged in the business of manufacturing, processing and mercerizing of cotton yarns and in the sale and distribution of said yarns in interstate commerce.

PAR. 2. Said respondent corporations named in the caption and described in paragraph 1 hereof on or about August 1, 1926, entered into an understanding, combination or conspiracy among themselves, and with and through said respondent association, to restrict, restrain and suppress competition in the sale and distribution of

mercerized plied cotton yarns at wholesale to garment manufacturers located throughout the United States by agreeing to fix and maintain uniform prices, terms, and discounts and extra charges for gassing, bleaching, and tinting at which said yarns are sold; and by cooperating with each other in the enforcement and maintenance of such fixed prices, terms, discounts and charges by exchanging information as to prices and charges received for said yarns. Pursuant to and in carrying out said understanding, combination or conspiracy, each and all of the said respondent corporations cooperating together and with and through said respondent association, have performed the following acts:

(a) Said respondent corporations at meetings held under auspices of said respondent association in July, August, and October, 1926, and thereafter from time to time at meetings attended by representatives of said corporations not under auspices of said respondent association adopted and fixed uniform prices at which they would quote and sell mercerized plied cotton yarns to their customers; also on August 19, 1926, at meeting of respondent association adopted uniform terms and discounts to be observed in selling said products and uniform charges for extra processing such as gassing, tinting and bleaching, which said prices, terms, discounts and extra charges, pursuant to said agreement, have been generally observed and maintained by said corporations until on or about August 1, 1929, at which time said respondent corporations began to disregard said fixed uniform prices, terms, discounts and charges in the sale of their said products, selling at whatever prices, terms and discounts they could obtain in competition with each other and mercerizers who were not members of the respondent association; so that the prices quoted and the charges, terms and discounts allowed customers for their products by said respondent corporations since August 1, 1926, until on or about August 1, 1929, have been substantially uniform, and said prices have at times during that period been arbitrarily advanced without respect to the raw cotton yarn market and the cost of the raw yarns to the said respondent corporations. Since on or about August 1, 1929, the prices quoted and the charges, terms and discounts allowed customers for their products by said respondent corporations have substantially varied. On March 7, 1927, the respondent association by formal resolution abolished and abandoned the rule and agreement relating to charges for gassing, tinting and bleaching adopted on August 19, 1926.

(b) Beginning in July, 1926, and periodically thereafter, respondent corporations at their said meetings which were attended by representatives of said corporations under the auspices of said re-

spondent association, and otherwise, have discussed general business and trade conditions including particularly costs of raw yarns, methods of stabilizing the price of mercerized cotton yarns and the prices which they had received for said yarns as disclosed in weekly reports submitted by said respondent corporations to the secretary of said respondent association; and as reported to them by customers; and also at such meetings have discussed so-called trade abuses such as price cutting, and guaranteeing against decline in prices.

(c) At a meeting of said respondent corporations held on or about July 22, 1926, said respondent association was organized and at a meeting held on or about August 5, 1926, said respondent, Charles R. White, was elected secretary, with offices to be maintained in the City of Washington, District of Columbia; and pursuant to authority given the said Charles R. White at that time by the said respondent corporations and respondent association, said respondent Charles R. White established a statistical bureau which collected from respondent corporations weekly reports showing the quality of the yarn sold during the preceding week, a description thereof and the price received from domestic and export sales, said information being consolidated and disseminated by the said Charles R. White to the said respondent corporations each week and presented by him at the regular meetings of said respondent corporations under the auspices of the said respondent association for study and discussion.

PAR. 3. The result of the acts and conduct of the said respondent corporations and the said respondent association, its officers and members, as set out in paragraph 2 hereof, has been at various times until on or about August 1, 1929, to substantially lessen, restrict and suppress competition in the sale of mercerized plied cotton yarns throughout the several States, particularly in the prices and extra charges quoted and discounts allowed by said respondent corporation; and tended to enhance the prices of said commodities above the prices which have theretofore prevailed and which would prevail under normal and open competition.

CONCLUSION

The acts and practices of respondents as set forth in the foregoing findings as to the facts are all to the prejudice of the public and competitors of the respondents, and under the circumstances therein stated, are unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent corporations, Aberfoyle Manufacturing Co., American Yarn & Processing Co., Belmont Processing Co., Dixie Mercerizing Co., Johnston Mills Co., National Yarn & Processing Co. of Tennessee, Spinners Processing Co., Clarence L. Meyers, Inc., and Standard Coosa-Thatcher Co., their representatives, agents, servants, employees, and successors, in connection with the sale of mercerized plied cotton yarns in interstate commerce, shall forthwith cease and desist from agreeing among themselves or with each other in any way to fix uniform prices, terms and discounts at which said yarns are sold and uniform extra charges for gassing, bleaching and tinting, and cooperating with each other in the enforcement and maintenance of such fixed prices, terms, discounts and charges, and said respondent corporations particularly shall cease and desist from performing the following acts:

(a) Adopting and fixing or agreeing to adopt and fix uniform prices at which they will quote and sell mercerized plied cotton yarns to their customers, also adopting and fixing or agreeing to adopt and fix standard terms and discounts to be observed in selling said products, also adopting and fixing or agreeing to adopt and fix uniform charges for extra processing such as gassing, tinting and bleaching, either at meetings attended by representatives of such corporations under the auspices of the respondent association or otherwise; and also observing and maintaining or agreeing to observe and maintain said uniform prices, uniform terms, discounts and extra charges.

(b) Discussing through representatives at meetings held under the auspices of the respondent association, or otherwise, methods of stabilizing the price of mercerized plied cotton yarns, the prices which they had received for said yarns, as disclosed in weekly reports submitted by them to the secretary of said respondent association, or the consolidated report submitted by the said secretary to the members of said association, or as reported to them by customers, and also so-called trade abuses such as price cutting or guaranteeing against decline in prices, for the purpose, or with the effect of promoting or maintaining said uniform prices, terms, discounts or charges or

otherwise unreasonably restraining competition among themselves in interstate commerce.

And it is further ordered, That the respondent Mercerizers Association of America, and its officers and representatives, agents, servants, and employees, forthwith cease and desist from cooperating with the said respondent corporations in any of the activities forbidden by this order as set forth in the foregoing paragraphs.

And it is further ordered, That the respondents, Mercerizers Association of America, its officers and members, Aberfoyle Manufacturing Co., American Yarn & Processing Co., Belmont Processing Co., Dixie Mercerizing Co., Johnston Mills Co., National Yarn & Processing Co., of Tennessee, Spinners Processing Co., Clarence L. Meyers, Inc., and Standard Coosa-Thatcher Co., shall, within 60 days from service upon them of a copy of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order by this Commission herein set forth.

Complaint

IN THE MATTER OF

LOUIS A. TUVIN AND CARL BYOIR, PARTNERS TRADING AS COLLOIDAL CHEMISTS

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

Docket 1691. Complaint, Aug. 31, 1929. Order, Apr. 6, 1931

Consent order requiring respondents to desist from misrepresenting results of, and endorsements accorded, their pretended fat reducing preparation "Viaderma," as in said order set forth.

Mr. Edward L. Smith for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Louis A. Tuvin, and Carl Byoir, partners trading as Colloidal Chemists and hereinafter referred to as respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondents are a partnership located in the City of New York, trading under the name of Colloidal Chemists and engaged in the manufacture in New York City and in the sale between and among the various States and Territories of the United States and the District of Columbia of a certain preparation or compound, which they call Viaderma, and which they falsely claim and represent is useful and effective in dissolving and removing excess flesh from the human body. Respondents ship the said product when sold, to purchasers thereof located in various States other than the State of New York and located in the Territories of the United States and the District of Columbia. In the course and conduct of their business, respondents are in competition with other persons, partnerships and corporations engaged in offering for sale and in selling in interstate commerce, printed professional advice, books of information and instruction and other methods and means and certain remedies and appliances for dissolving or otherwise removing flesh from the human body.

PAR. 2. In soliciting sales for their said product, respondents advertise in a large number of newspapers, magazines and periodicals of general circulation in the United States and in the several States thereof, which said advertisements contain an illustration or depiction of a woman being fitted for garments by a saleswoman, who is depicted as stating: "Except for your hips you could wear a size smaller" and which said advertisements contain, in addition, the following statements:

No Medicines. No Starvation Diet No Dangerous Exercise Reduce Where You Want to Reduce

Discovery of infiltrating oxygen reducing cream—quickly and safely banishes double chins, and slenderizes big hips, fat waists, legs and arms.

Any woman or man who wants to take off fat on any part of the body can now do so quickly and safely. There is no question about this. It is a proved fact.

The discovery of oxygen reducing cream was purely accidental. A great New York doctor asked three of the ablest Colloidal Chemists in New York to try to find a remedy for chronic skin troubles. (Colloidal chemistry is one of the latest developments in chemical science.) These Colloidal Chemists prepared an infiltrating cream which would liberate oxygen when absorbed through the skin. They discovered that whenever the part to be treated was fat, this excess weight quickly disappeared. Reducing tests were then made on fat people with amazing results. One woman reduced her neck one inch in a few treatments; another two inches. Still another took off twenty-nine pounds in six weeks. Equally successful results were had in reducing fat waists, arms, legs, and big hips. So safe is Viaderma, as it is called, that it has the approval of chemists and physicians who oppose all other methods of quick fat reduction.

Viaderma is a golden brown cream, which is rubbed rapidly on the skin. You see the cream disappear at once, leaving a clean white foam on the skin surface. The penetrating cream carries oxygen to the fatty tissues and in a few days' time this oxygen gradually melts away the excess fat. You get definite results from a single jar which contains an 18 days' supply. Get full information at once. Mail coupon today.

PAR. 3. Said statements set out in the said advertisements mentioned in paragraph 2 hereof are false and misleading in that:

1. The use of Viaderma will not enable a person to reduce his or her weight.

2. The use of Viaderma will not enable a person to reduce or remove excess fat from any part of the body.

3. Viaderma is not an infiltrating oxygen reducing cream—quickly and safely banishing double chins and slenderizing big hips, fat waists, legs and arms.

4. Viaderma is not an infiltrating cream which will liberate oxygen when absorbed through the skin and excess weight does not disappear whenever the part of the body treated with Viaderma is fat.

5. Reducing tests were not made by the use of Viaderma on fat people with amazing results.

6. A woman did not with the use of Viaderma reduce her neck one inch in a few treatments nor did another woman reduce her neck two inches, with the use of Viaderma.

7. No one took off with the use of Viaderma, 29 pounds of fat in six weeks.

8. Successful results were never secured by the use of Viaderma in reducing fat waists, arms, legs and big hips.

9. Viaderma does not have the approval of chemists and physicians who oppose all other methods of quick fat reduction.

10. Viaderma does not carry oxygen to the fatty tissues nor in a few days' time does oxygen from Viaderma gradually melt away the excess fat.

11. A user does not get definite results by way of weight reduction from a single jar of Viaderma, nor from any amount, however large or small, of Viaderma.

PAR. 4. In and throughout the several States of the United States are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or of portions of flesh which they now bear and of which they desire to be rid. Said statements and representations in said advertisements of respondents have the tendency and capacity to take business from respondents' said competitors and to mislead and deceive the purchasing public into the belief and to cause the ultimate consumer to purchase said Viaderma in the belief that said Viaderma, as such remedial agent for the reduction of excessive fat or flesh,

First: Is a scientifically accurate method of treatment;

Second: Is a safe, effective, and dependable remedy that may be used by any and all purchasers thereof without inconvenience or danger of harmful results to the physical health, and without medicine, diet or exercise.

The said acts and practices of the respondents are all to the prejudice of the public and of the competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 31st day of August, 1929, is-

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sues its complaint against Louis A. Tuvin and Carl Byoir, partners trading as Colloidal Chemists, respondents herein, and caused the same to be served upon said respondents as required by law, in which complaint it is charged that said respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On January 23, 1931, the said respondents filed herein their written answer to said complaint, in which answer they and each of them expressly elected to refrain from making a defense to the complaint herein and consented that the Commission might make, enter and serve upon said respondents an order to cease and desist from the alleged violations of law set forth in the said complaint; and the Commission having accepted and considered such pleading, and being fully advised in the premises,

It is now ordered, That the respondents, Louis A. Tuvin and Carl Byoir, partners trading as Colloidal Chemists, and each of them, their agents, representatives, employees and successors, and the agents, representatives, employees and successors of each of them do forthwith cease and desist from doing directly or indirectly any or all of the following acts hereinafter designated and set forth, in connection with the offering for sale or in selling in interstate commerce or in the District of Columbia the preparation or compound dealt in by the said respondents and called by them Viaderma:

(1) Advertising, representing or stating that:

(a) The use of Viaderma will enable a person to reduce his or her weight.

(b) The use of Viaderma will enable a person to reduce or remove excess fat from any part of the body.

(c) Viaderma is an infiltrating oxygen reducing cream—that it will quickly and safely vanish double chins and slenderize big hips, fat waists, legs, and arms.

(d) Viaderma is an infiltrating cream which will liberate oxygen when absorbed through the skin and that excess weight disappears whenever the part of the body treated with Viaderma is fat.

(e) Reducing tests were made by the use of Viaderma on fat people with amazing results.

(f) A woman with the use of Viaderma reduced her neck 1 inch in a few treatments and/or that another woman reduced her neck 2 inches with the use of Viaderma.

(g) Anyone took off with the use of Viaderma 29 pounds of fat in six weeks, or within any other time.

(h) Successful results were secured by the use of Viaderma in reducing fat waists, arms, legs, and big hips.

(i) Viaderma has the approval of chemists and physicians who oppose all other methods of quick fat reduction.

(j) Viaderma carries oxygen to the fatty tissues and that in a few days' time oxygen from Viaderma gradually melts away the excess fat.

(k) A user gets definite results by way of weight reduction from a single jar of Viaderma or from any amount however large or small of Viaderma.

(2) Making or publishing any other false or misleading representation or statement regarding said preparation or compound called by them Viaderma.

And it is hereby further ordered, That each of the said respondents within 60 days from and after the date of the service upon him of this order shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

Complaint

15 F. T. C.

IN THE MATTER OF
KROMO PLATE CORPORATION

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

Docket 1891. Complaint, Jan. 5, 1931—Order, Apr. 6, 1931

Consent order requiring respondent to desist from the use of the words chromium, chrome, chromo or any phonetic form thereof such as kromo, in labeling, advertisements, or representations in connection with sale of its compound, product, or plate to designate or describe the same, or the effect claimed to be produced thereby, and from instructing or advising agents or salesmen engaged in sale thereof to represent that use of compound or product on either certain automobile parts or other metal objects produces a chromium plate or other effect attributable to chromium, as in said order set forth and qualified.

Mr. Edward E. Reardon for the Commission.

Mr. William Thomas Jones and *Mr. Joseph L. Gould*, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Kromo Plate Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kromo Plate Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of New York, having its principal place of business in the City of New York, State of New York. It is now and for some months past has been engaged in the manufacture, sale and distribution in interstate commerce of a chemical compound in fluid form for producing a silver polish when applied to any metallic surface except iron or steel. Respondent causes its said product, when sold, to be shipped from its place of business in the State of New York to purchasers thereof in various other States of the United States. In the course and conduct of its business, respondent has been, during the period above named, in competition with other corporations,

individuals, firms and partnerships likewise engaged in the sale and distribution of similar products in interstate commerce.

PAR. 2. From about the year 1926 there has been in use in this country, for giving metals a permanent silver luster, a process of electrical plating with the metal chromium. Patents have been issued for aforesaid process by the United States Patent Office and the owners of said patents have sold and sell the rights to use such process to manufacturers in various States of the United States who use such permanent chromium plating on their products, such as automobiles, cutlery, kitchen utensils, plumbing, etc. Respondent's product contains no chromium and is not applied by electrolysis but by a cloth by spreading or rubbing on a metal surface. It is not permanent but lasts ordinarily at most six or eight weeks.

PAR. 3. In the conduct of its business as aforesaid, respondent has caused advertisements to be inserted in newspapers having interstate circulation, soliciting the services of agents to demonstrate and sell its product above described. To prospective agents, answering said newspaper advertisements, respondent has sent circulars representing in part: "This secret formula polish triple-plates as it polishes, leaving a clean high luster like genuine chromium," "Throughout the entire country the popularity of chromium sales has grown with unprecedented speed. The agent who takes advantage of this unforeseen popularity will ride the crest of the wave to a sure source of profit." "You can emphasize the fact that chromium has leaped into popularity overnight. It has taken the place of inferior plating on metal objects in the home and for chemical uses. You can call attention to the fact that manufacturers of high-priced automobiles, expensive plumbing fixtures and exquisite silverware in hundreds of industries have turned to chromium plate as the perfect finish possessing greater durability and lasting beauty and now—at last this superior finishing process has progressed from the hands of a few exclusive specialists and has been made available to everyone—through YOU, as the agent for Kromo Plate." Respondent's circulars represented that by an investment of \$5 agents would make \$13 profit. Respondent's agents in various States have been supplied by it with circulars, leaflets and printed matter for distribution among the public, containing such statements as, "Chromium plating has become popular overnight," "Manufacturers have turned quickly to chromium plate," "In the past, chromium plating has been a costly process. Now Kromo-Plating, which is a similar process, can be done easily and inexpensively by anyone in a few moments' time"; also other statements of like purport. Labels affixed to the containers of respondent's product bore the words, "Kromo Plate, a Plat-

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ing Compound," and below, the statement, "Chromo Plates silver, nickel, brass, etc." The product sold by respondent as aforesaid is not a compound containing chromium as an ingredient and does not, when used, deposit any chromium or produce a chromium plate and will not produce a finish like that of chromium.

PAR. 4. The acts and representations by respondent described in the preceding paragraphs have the capacity and tendency to, and do deceive and mislead the public into the belief and understanding that respondent's product is similar to and a substitute for chromium plating and by said deception to lessen the value of the rights held by patentees of chromium plating and their licensees, and divert sales from manufacturers and vendors of chromium plated wares and from manufacturers and vendors of metal polishes who truthfully represent the nature and ingredients thereof.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on the 5th day of January, 1931, issued its complaint against the respondent, Kromo Plate Corporation, and caused the same to be duly served upon said respondent, as required by law, on the 7th day of January, 1931, in which complaint it is charged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On January 26, 1931, the respondent, by its attorney, filed its answer in writing to said complaint, wherein respondent stated that it refrains from contesting this proceeding, and the Commission having accepted and considered such pleading and being fully advised in the premises,

It is ordered, That the respondent, Kromo Plate Corporation, its officers, agents and employees, in connection with the sale or offering for sale in interstate commerce of any compound or product for use in the plating of metals, do cease and desist from:

1. Using the words Chromium, Chrome or Chromo or any phonetic form of any of them, such as "Kromo," either alone or in con-

nection with the words plate, plating, polish, or polishing on labels on containers in or from which said compound or product is sold, to designate or to describe either the said compound or product or the plate, plating, or other effect claimed to be produced on metal objects by means of the application of the said compound or product, unless or until chromium metal is a substantial constituent in the composition of such compound or product, or unless or until the plate, plating, or said other effect claimed to be produced by said compound or product is substantially of chromium metal or substantially derived therefrom;

2. Using the words Chromium, Chrome, or Chromo or any phonetic form of any of them, such as the word "Kromo," either alone or in connection with the words plate, plating, polish, or polishing; in letters or in circulars caused to be sent by respondent to agents or salesmen engaged in the sale of said compound or product, or to prospective agents or salesmen; or in newspapers or other advertising mediums, to designate or to describe either the said compound or product or the plate, plating, or other effect claimed to be produced by means of the application of said compound or product to metal objects, unless or until chromium metal is a substantial constituent in the composition of such compound or product, or unless or until the plate, plating, or said other effect is substantially of chromium metal or is substantially derived therefrom;

3. Instructing or advising agents or salesmen engaged in the sale of said compound or product, or prospective agents or salesmen, either orally or in writing, to represent to members of the public, directly, or indirectly by suggestion based on any of the various uses of chromium, or otherwise, that the use or application of said compound or product on certain automobile parts or other metal objects produces chromium plate or chromium plating thereon or any other effect attributable to chromium, unless or until chromium metal is a substantial constituent in the composition of such compound or product, or unless or until the plate, plating or said other effect is substantially of chromium or is substantially derived therefrom.

It is further ordered, That the respondent, Kromo Plate Corporation, shall, within 30 days after the service upon it of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

IN THE MATTER OF
BRADLEY-BOSTON, INCORPORATED

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

Docket 1847. Complaint, June 16, 1930—Decision, Apr. 13, 1931

Where a corporation engaged in the sale by mail order of various merchandise; in its advertisements thereof in magazines and other periodicals and in catalogues published and distributed by it,

- (a) Described certain articles of jewelry as "richly carved", "Richly engraved", "Richly carved, hand engraved" "ruby gem", "fiery, flashing gem", "blue sapphire colored gem", "sapphire crown jewel", "sparkling garnet", "blue-white perfect gem" and "sapphire jewel pendant", facts being that the articles in question were neither carved nor engraved nor set with precious stones, as the case might be;
- (b) Described a certain article advertised and pictured as a "ring watch" and certain necklaces as "Concha pearls", "Princess pearls" or "American Beauty pearls", facts being article first referred to was not timepiece and necklaces were not made of pearl;
- (c) Described certain tableware as "silver ware", and "Gentlemen's Traveling Sets" as contained in a rich art leather case, facts being tableware contained no silver and cases referred to were not made of leather; and
- (d) Represented itself on letterheads as manufacturers, fact being it made none of its merchandise;

With capacity and tendency to mislead purchasing public into believing its merchandise and status to be as above set forth, and with effect of inducing purchase of its products in reliance on such erroneous belief and of diverting trade from and otherwise injuring its competitors:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Greer, Johnson & North, of Boston, Mass., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation engaged in the sale by mail order of various articles of merchandise direct to purchasers in States other than Massachusetts, and with principal office and place of business in Newton, Mass., with misrepresenting business status, and advertising falsely or misleadingly in said respect and as to nature and composition of products, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce,

Respondent, as charged, engaged, as above set forth, makes false and misleading statements in describing, referring to and advertising its products in magazines, other periodicals and catalogues, as follows:

Certain articles of jewelry as being "richly carved", "richly engraved", "richly carved, hand engraved", or a "ring watch", or as being "set with 'ruby gem'; 'red ruby gem'; 'ruby and emerald gem'; 'diamond cut gem'; 'fiery, flashing gem'; 'blue sapphire colored gem'; 'magnificent center gem'; brilliant blue sapphire gems'; 'sapphire crown jewel'; 'sparkling garnet'; 'blue white perfect gem'; and/or 'sapphire jeweled pendant'"; facts being articles in question are not carved nor engraved, nor a timepiece, nor watch, nor set with precious stones, as the case may be.

Certain necklaces as "Concha pearls", "princess pearls", and/or "American beauty pearls", and certain tableware as "silverware"; facts being necklaces are not made from pearls and tableware is composed of substances other than silver.

Certain "gentlemen's traveling sets" as contained in a "rich art leather case" and certain toilet articles as "ivorette"; facts being cases are not made of leather but of products simulating leather in appearance or finish, and toilet articles are made of substances other than ivory.

Respondent, further, as charged, in the course and conduct of its business, in its various catalogues describes itself as "wholesale jewelers", and on its letterheads also sets forth the representations "We are manufacturers", "We sell dealers everywhere"; facts being respondent is a retail mail order house manufacturing none of the merchandise dealt in by it, and soliciting no business from nor making sales to, retail stores.

Aforesaid acts and things done by respondent, as alleged, in connection "with the representation, designation and description of its merchandise and status, as hereinbefore set out, have the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent's merchandise and status are as represented, designated and described in respondent's catalogues, letterheads or other advertising matter", and said acts and things, as charged, "are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717) the Federal Trade Commission issued

and served a complaint upon the respondent, Bradley-Boston, Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and of respondent before a trial examiner of the Commission duly appointed thereto. Thereupon, this proceeding came on for final hearing on the brief and oral argument of counsel for the Commission, counsel for respondent not having filed any brief herein and not presenting oral argument to the Commission. And the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Bradley-Boston, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business in the city of Newton, in said State. It is now, and for more than one year last past has been, engaged in a mail order business, selling various articles of merchandise direct to purchasers thereof located in a State or States of the United States other than the State of Massachusetts, and caused and causes its said merchandise, when so sold, to be transported from its said place of business in the State of Massachusetts into and through other States of the United States to the purchasers thereof located in a State or States of the United States other than the State of Massachusetts. In the course and conduct of its said business respondent was and is in competition with other corporations, partnerships, firms and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, the respondent has been and now is soliciting the sale of, selling and transporting in commerce certain articles of jewelry described, referred to and advertised in advertisements inserted in magazines and other periodicals sold and distributed in various States of the United States. The descriptive matter in such advertisements advertising said articles of jewelry contains the representations that certain of the articles of jewelry are "richly carved", "richly engraved", "Richly carved, hand engraved". In truth and in fact, the articles of jewelry so described are not carved and are not engraved.

PAR. 3. In the course and conduct of its said business as described in paragraph 1 hereof, the respondent has been and now is soliciting the sale of, selling, and transporting in commerce, certain articles of jewelry described, referred to and advertised in advertisements inserted by it in magazines and other periodicals sold and distributed in various States of the United States. The descriptive matter in said advertisements advertising said articles of jewelry contains the representation that a certain article therein advertised and pictured is a "ring watch". In truth and in fact the said article is not a timepiece or watch.

PAR. 4. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has been and now is soliciting the sale of, selling and transporting in commerce certain articles of jewelry described, referred to and advertised in catalogues published and issued by it and distributed to its customers and prospective customers located in various States of the United States. The descriptive matter in said catalogues advertising said articles of jewelry contains the representations that the articles of jewelry are set with "ruby gem", "red ruby gem", "ruby and emerald gem", "diamond cut gem", "fiery, flashing gem", "blue sapphire colored gem", "magnificent center gem", "brilliant blue sapphire gem", "sapphire crown jewel", "sparkling garnet", "blue-white perfect gem", or "sapphire jewel pendant". In truth and in fact, the articles of jewelry so represented, designated, described and referred to are not set with precious stones.

PAR. 5. In the course and conduct of its business as described in paragraph 1 hereof, the respondent has been and now is soliciting the sale of, selling and transporting in commerce certain necklaces described, referred to and advertised in catalogues published and issued by it and distributed to its customers and prospective customers in various States of the United States. The descriptive matter in said catalogues advertising the said necklaces contains the representations that the said necklaces are "Concha pearls", "Princess pearls", or "American Beauty pearls". In truth and in fact the necklaces so represented, designated, described and referred to are not made of pearls.

PAR. 6. In the course and conduct of its business as described in paragraph 1 hereof, respondent has been and now is soliciting the sale of, selling and transporting in commerce certain tableware described, referred to and advertised in catalogues published and issued by it and distributed to its customers and prospective customers located in various States of the United States. The descriptive matter in said catalogues advertising said tableware contains the representation that the said tableware is "silverware". In

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truth and in fact, the tableware so designated, represented, described and referred to is neither composed of, nor does it contain, any silver.

PAR. 7. In the course and conduct of its business as described in paragraph 1 hereof, respondent has been and now is soliciting the sale of, selling and transporting in commerce certain "Gentlemen's Traveling Sets", described, referred to and advertised in catalogues published and issued by it and distributed to its customers and prospective customers located in various States of the United States. The descriptive matter in said catalogues advertising the said "Gentlemen's Traveling Sets", contains the representation that the said "Gentlemen's Traveling Sets" are contained in a "rich art leather case". In truth and in fact the said cases are not made of leather.

PAR. 8. In the course and conduct of its business as described in paragraph 1 hereof, respondent has been and now is describing itself on its letterheads by the following representation: "We are manufacturers." In truth and in fact, respondent manufactures none of the items of merchandise which it sells.

PAR. 9. The acts and things done by respondent in representing, designating and describing its merchandise and status as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that respondent's merchandise and status are as represented, designated and described in respondent's catalogues, letterheads or other advertising matter, and have induced the purchase of respondent's products in reliance on such erroneous belief and have diverted trade from and otherwise injured competitors of respondent.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission on the complaint of the Commission, the answer of respondent thereto, the testimony and evidence, and brief and oral argument of counsel for the Commission, no brief having been sub-

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mitted nor oral argument made by counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that respondent has been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Bradley-Boston, Inc., its officers, agents, representatives and employees, in connection with the advertising and offering for sale and sale in commerce between and among various States of the United States and in the District of Columbia of the various articles of jewelry, toilet articles and tableware offered for sale and sold by respondent, do cease and desist from, directly or indirectly—

(1) Representing to purchasers or prospective purchasers that certain articles of jewelry are carved or engraved, when such is not the fact.

(2) Representing to purchasers or prospective purchasers that certain articles of jewelry are "ring watches", when the said articles of jewelry are not timepieces or watches.

(3) Representing to purchasers or prospective purchasers that certain articles of jewelry are set with gems, jewels, or precious stones, when such is not the fact.

(4) Representing to purchasers or prospective purchasers that certain necklaces are made of pearls, when such is not the fact.

(5) Representing to purchasers or prospective purchasers that certain articles of tableware are silverware, when the said articles of tableware are not composed of silver, but are composed of a product or products other than silver.

(6) Representing to purchasers or prospective purchasers that cases are made of art leather when the said cases are not made of leather.

(7) Representing to purchasers or prospective purchasers that respondent manufactures the products which it sells, or any of them, when such is not the fact.

It is further ordered, That the respondent, Bradley-Boston, Inc., shall, within 60 days after service upon it of a copy 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 hereinbefore set forth.

IN THE MATTER OF

H. JOSEPHINE PETERSON DOING BUSINESS AS
PETERSON INSTITUTE OF DIET

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

Docket 1671. Complaint, May 20, 1929—Decision, Apr. 14, 1931

Where an individual engaged in treating patients at her "Institute of Diet", carried on by her with no other assistance than that of a part-time employee, and without drugs, blood tests, employment or consultations with doctors (other than for death certificates) or ever having taken any prescribed course in medicine, or nursing, or having received any diploma or certificate therein, and in conducting similar treatments, through diet, by mail, made such false and misleading representations in printed circulars and pamphlets sent to inquirers responding to her advertisements in the papers and magazines, as that "Cancer is the result of imperfect nutrition", "Food taken one way brings on a cancer but used another way it cures a cancer", "Deafness is entirely due to nutrition", and "To make a strong statement, no matter what your disease, it can be cured through proper nourishment of the body", and that her treatment, based on principles set forth, would cure the patient; with capacity and tendency to induce sufferers from various diseases to undergo and pay for such treatment and with effect of so doing and thereby depriving physicians and dietitians of business:

Held, That such practices, under the conditions and circumstances set forth were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James T. Clark for the Commission.

Mr. Aubrey B. Fennell and *Mr. Lucius Q. C. Lamar*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Washington, D. C., in conducting a business purporting to afford cures for various human diseases through dietary treatment, with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising her aforesaid business in printed circulars, pamphlets, and magazines, made such false statements and representations as that "The cause and cure of cancer are absolutely matters of nourishment", "Deafness is entirely due to nutrition", and "To make a strong

statement, no matter what your disease it can be cured through proper nourishment of the body,"¹ and represented that her treatment, based on the principles described in the aforesaid statement, had and would cure the diseases named therein and others, with the result that various persons in reliance upon the aforesaid representations and promises became inmates of respondent's residence in Washington and paid for treatment therein, or subscribed for a course of treatment by mail, and with the capacity and tendency to induce sufferers from various diseases so to do, and thereby deprive medical practitioners, respondent's competitors, who do not make such representations, of business.

"Circulation by respondent" as alleged "of said false statements and representations is fraudulent and an injury to the public, as tending to establish unscientific ideas and induce reliance thereon in place of scientific medical advice and treatment.

"Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, H. Josephine Peterson, charging her with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondent having entered her appearance and filed her written return in answer to the complaint herein, hearings were heard before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint; the respondent having waived the opportunity given her to offer evidence. Thereafter this matter came on regularly for final hearing on the briefs of counsel and oral argument, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

¹ Other statements as set forth in the complaint, were as follows:

"Cancer is the result of imperfect nutrition."

"Food taken one way brings on a cancer but used another way it cures a cancer."

"The whole secret of cancer lies in the food problem."

"We grow deaf simply and solely because we are not receiving the food that we need. There is no other cause for deafness."

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. Josephine Peterson, is and has been since August, 1925, a resident of the city of Washington, in the District of Columbia, and during said period has maintained and conducted at her residence in said city the so-called "Peterson Institute of Diet", where, in consideration of money by them paid her therefor, she is, and during said period has been, engaged in treating, advising, instructing and prescribing in the matter of diet for boarders, inmates or patients coming to her with various diseases for treatment and cures advertised by her as hereinafter described. From this "Institute" she also conducts, for consideration, as aforesaid, treatments of diseases by mail. She uses no drugs, makes no blood tests and employs no doctors of medicine, and consults none except for the purpose of getting death certificates signed. She conducts the "Institute" alone, with the aid of a part-time assistant. She has never taken any prescribed course in medicine or in nursing, nor received any diploma or certificate in either line. She advertised treatment by said Peterson Institute of Diet in the District of Columbia and in the several States of the United States in the Washington Star and in magazines, from 1925 to the early part of 1929, and to those who answered these advertisements she sent by mail, or otherwise, printed circulars and pamphlets prepared by her describing and advertising said "Institute" for the purpose of soliciting and procuring persons to pay for treatment therein, or to subscribe for treatment by mail, consisting of advice and directions as to diet, based on the theories and representations and cure of diseases stated in said circulars and pamphlets.

PAR. 2. Respondent has, in said circulars and pamphlets and in correspondence, represented and held out to the public the following statements as true:

"Cancer is the result of imperfect nutrition."

"The cause and cure of cancer are absolutely matters of nourishment."

"Food taken one way brings on a cancer but used another way it cures a cancer."

"The whole secret of cancer lies in the food problem."

"Deafness is entirely due to nutrition."

"We grow deaf simply and solely because we are not receiving the food we need. There is no other cause for deafness."

"To make a strong statement, no matter what your disease, it can be cured through proper nourishment of the body."

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PAR. 3. Respondent represents and holds out to the public in said advertisements, circulars, pamphlets and correspondence, that treatment by her, based on the principles described in said statements quoted in paragraph 2, has cured and will cure the diseases named therein, and others.

PAR. 4. Various persons, relying on the statements, representations and promises contained in said circulars, pamphlets and correspondence, and other advertising matter, have become boarders, inmates or patients at respondent's residence in the City of Washington and have paid for treatment by respondent therein, or have subscribed for a course of treatment by respondent by mail and paid respondent therefor.

PAR. 5. Respondent has been and is now in competition with physicians and dietitians who do not make the representations stated in paragraph 2 hereof, or the claims for cure described in paragraph 3 hereof.

PAR. 6. Said statements and representations are false and misleading and have the capacity and tendency to induce persons suffering from various diseases to undergo treatment by respondent at her said "Institute" or by mail, and to pay her therefor; thereby taking away business from physicians and dietitians.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, H. Josephine Peterson forthwith cease and desist in the District of Columbia or in interstate commerce from:

(1) Publishing or causing to be published in advertisements, circulars, pamphlets, or business correspondence any statements to the effect that:

“Cancer is the result of imperfect nutrition.”

“The cause and cure of cancer are absolutely matters of nourishment.”

“Food taken one way brings on a cancer but used another way it cures a cancer.”

“The whole secret of cancer lies in the food problem.”

“Deafness is entirely due to nutrition.”

“We grow deaf simply and solely because we are not receiving the food that we need. There is no other cause for deafness.”

“To make a strong statement, no matter what your disease it can be cured through proper nourishment of the body.”

(2) Representing and holding out to the public in advertisements, circulars, pamphlets or business correspondence that treatment by her, based upon the principles described in the statements quoted above, has cured and will cure the diseases named therein and others.

(3) Soliciting through advertisements, circulars, pamphlets or business correspondence, or personally, persons to be treated by her on the basis of the principles described in the statements hereinabove quoted, either personally or at her home or so-called “Institute of Diet”, or by advice given in written communications; and receiving from persons compensation or remuneration for such treatment; also, giving board and lodging at her home known as the “Peterson Institute of Diet”, in the City of Washington, D. C., or elsewhere, to any person secured through soliciting or advertising as above described.

It is further ordered, That the respondent shall, within 60 days after the service upon her of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
FAYRO LABORATORIES, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1564. Complaint, Feb. 19, 1929—Decision, April 16, 1931*

Where a corporation engaged in manufacture of a bath salts composed principally of Epsom salt, together with common salt, glauber salt, and oil of pine needles for scent, and in the sale of said preparation as a useful and effective means for removing excess fat, to wholesalers and retail drug stores and direct to consumers,

- (a) Used its trade name containing word "Laboratories" in advertisements in numerous newspapers, magazines and periodicals and printed matter upon the wrappers of the product, booklets enclosed therewith, and on the packages, and on letters, circulars and stationery, together with a picture of a chemist with test tube and other common chemical apparatus; and
- (b) Stated that formula involved was scientific and based on the labors of its chemists and study of analyses of various hot springs, including 22 of the most world famous, and that scientific tests of its laboratory, in which it made its said product, proved the value of the preparation as a solvent of fat;

Notwithstanding facts it employed no chemists or physicians and had no laboratory, formula was not obtained from or through chemists or scientific persons, but an actress, no chemists had ever been involved in connection therewith nor scientific tests, experiments or research, nor any laboratory or analyses;

With capacity and tendency to mislead and deceive purchasing public and ultimate consumers into purchasing said product in belief same was result of many years of scientific research in the United States and foreign countries, and that it maintained laboratories where same was scientifically mixed by chemists, and to divert trade to it from competitors:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Edward J. Hornibrook, for the Commission.

Mr. Cornelius D. Scully and *Mr. H. K. Brooks*, of Pittsburgh, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the manufacture of a preparation of bath salts, alleged to be effective for the removal of excess flesh, and in the sale thereof to wholesale and retail drug stores, and, chiefly, direct to the users through the mails, and with

office and principal place of business in Pittsburgh, with advertising falsely or misleadingly, and misbranding or mislabeling as to qualities and nature of product, and as to business status, or advantages, connections, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, makes such statements in its advertisements in newspapers and periodicals, and in its descriptive matter upon the wrappers and labels of the product and in booklets enclosed therewith, as that the user can reduce from 2 to 4 pounds in a night, eating, doing and wearing what the user pleases, taking no risky medicine, and avoiding need for violent exercise, that the product is the concentrate of the natural mineral salts, which make effective the waters of twenty-two hot springs in America, England and Europe, that its use has removed excessive weight, made skins more lovely, bodies more shapely and minds brighter, that through use in a bath it opens the pores, and stimulates perspiration, forcing out surplus fat and bodily poison, that it is invigorating, that "Your physician will tell you that Fayro is certain to do the work and that it is absolutely harmless," that it is recommended by physicians, that while it reduces weight generally its effect can be concentrated on any parts desired, that "The hot springs are now brought to you," that its value is proved by laboratory tests, that it is based on a formula evolved by its chemists through analyses of waters and active ingredients of 22 of the world's most famous hot springs, that it is readily soluble, making it possible, "to recreate a hot springs bath at home" that "it is strong in osmotic value," in other words, "readily enters through the skin and mixes with the water in and around the sweat glands," that "when you put Fayro into the bath water you have recreated a hot springs bath," that it is very helpful "in the early stages of Bright's disease," and that thousands have benefited by it.

The facts are that said product made from Epsom salts, common salt and a small amount of perfume, is not the concentrate and mineral salt making effective the waters of the hot springs and will not create a hot springs bath nor remove fat from the body, and is an unsafe, unscientific, ineffective and undependable nostrum, chemists were never put to work to prepare the formula therefor nor employed by respondent in supervising its preparation, respondent has no laboratory for conducting any such investigations as suggested, and has never made any analyses of any of the hot springs' waters, reliable and skilled physicians do not recommend its use, it will not benefit a case of Bright's disease, and while perspiration

will take place in a hot bath as recommended by respondent, said product does not increase such perspiration in the least, and such a bath may do much injury in certain classes of ailments which may be present in obese persons.¹

According to the complaint "In and throughout the several States of the United States are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or of portions of flesh which they now bear and of which they desire to be rid. Said statements and representations in said advertisements, labels, wrappers and booklets have the tendency and capacity to take business from respondent's said competitors and to mislead and deceive the purchasing public into the belief and to cause the ultimate consumer to purchase said compound in the belief that said compound, as such remedial agent for the reduction of excessive fat or flesh, first, is a scientifically accurate method of treatment; second, is the result of many years of scientific research in the United States and foreign countries; and third, is a safe, effective and dependable remedy that may be used by any and all purchasers thereof without inconvenience or danger of harmful results to the physical health"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Fayro Laboratories, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed answer to said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusion drawn therefrom:

¹ As to this, complaint avers that "baths taken as recommended by respondent may do much injury, particularly in cases of heart trouble, hardening of the arteries, exophthalmic goiter, chronic Bright's disease and dropsy. One or more of these ailments may be present in obese persons. If the temperature of the bath should be raised too high and the person is unaccustomed to hot bathing material harm is likely to result, especially in a case of bodily impairment."

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business in the city of Pittsburgh in the State of Pennsylvania.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the manufacture, sale and offering for sale of a preparation of bath salts which is advertised and sold by respondent under the trade name of "Fayro"; the principal ingredient of which is Epsom salt and the other ingredients are common salt, glauber salt, and oil of pine needles, the latter ingredient being used only for the purpose of scenting the bath made from Fayro. The proportions of the ingredients used are approximately $7\frac{1}{2}$ to 8 parts Epsom salt, 1 part glauber salt, and from 1 to $1\frac{1}{2}$ parts common salt. Fayro bath salts is not always prepared with sufficient thoroughness to insure an even distribution of each ingredient throughout the mixture and the only analysis of Fayro in evidence is a package that contains no glauber salt but was made up chiefly of Epsom and common salt with 7 parts Epsom to 3 parts common, scented as aforesaid. In making, mixing, packing, storing and selling its product, respondent employs from five to twenty persons, none of whom is a chemist. Respondent maintains in its advertising that Fayro bath salts when used as directed, i. e., dissolved in a tub containing a quantity of hot water and the body immersed therein, is useful and effective in dissolving and removing excessive fat from the human body.

PAR. 3. Respondent sells part of its said product direct to the users of said compound by mail and part to wholesalers and retail drug stores, many of whom reside and have their places of business in States other than the State of Pennsylvania, and cause the same, when so sold, to be transported from its said place of business in the city of Pittsburgh in the State of Pennsylvania into and through other States of the United States to said purchasers at their respective points of location or places of business. Respondent has sold approximately 1,500,000 packages of Fayro.

The retail price of Fayro is \$1 per package of 20 ounces.

PAR. 4. Respondent in the course and conduct of its business, as aforesaid, is in competition with other persons, partnerships and corporations in and throughout the several States of the United States who are likewise engaged in the sale of and offering for sale in interstate commerce other methods, means, preparations and appliances for dissolving or otherwise removing fat from the human

body and many of such in nowise misrepresent their said preparations, means, methods or appliances.

PAR. 5. Respondent has spent the sum of about \$500,000 in advertising said products. Respondent in soliciting sales for Fayro advertises in a large number of newspapers, magazines and periodicals of general circulation in the several States of the United States and in printed matter upon wrappers enclosed in the packages containing Fayro and in booklets enclosed in such packages and on said packages and in letters, circulars and on stationery. In said advertisements respondent holds out that Fayro is a safe, effective, dependable and scientific remedy for the reduction of excessive fat. Respondent in said advertising uses its trade name "Fayro Laboratories, Inc." and uses a picture of a chemist with a test tube in his hand and on a table other apparatus commonly used by a chemist and the words,

"We studied the analysis of the various hot springs when preparing the formula for Fayro."

and

"When we first started to work to prepare the formula for Fayro we obtained analysis of the waters and ingredients of twenty-two of the most famous hot springs throughout the world."

and

"Basically these formula were much alike. All contained various salts, various forms of magnesia, sodium, etc. These were combined in many various proportions and experiments were conducted in the laboratories and upon patients."

and

"Laboratory tests prove the value of Fayro as a solvent of fat."

and

"When we first put chemists to work to prepare the formula for Fayro we obtained analyses of the water and the active ingredients of twenty-two of the most famous hot springs throughout the world."

Respondent in said advertising represents that it maintains a laboratory where Fayro is compounded and scientific tests and experiments of and with the product are made and that Fayro is made from a scientific formula.

PAR. 6. In truth, the formula for making Fayro was obtained from an actress who was neither a chemist nor a scientific person at all; respondent never put chemists to work to prepare the formula for Fayro; respondents never conducted or caused to be conducted any

scientific tests, experiments or research in connection with the product Fayro or the formula thereof; it does not now and never did employ any chemists or physicians in connection with the preparation of Fayro bath salts; respondent does not now and never did maintain a laboratory for conducting investigations or experiments as to the product Fayro; respondent does not now and never did maintain a laboratory for any purpose; respondent did not conduct or cause to be conducted analyses of the waters of twenty-two or any hot springs, nor did respondent make use of the analyses of the waters of any hot springs in arriving at the formula for making the product Fayro; no chemists or scientists have or have had anything to do with the making, compounding or mixing of Fayro, or with the evolving of the formula of Fayro.

PAR. 7. The statements and representations as set forth in paragraph 5 hereof have the tendency and capacity to mislead and deceive the purchasing public into the belief and cause the ultimate consumers of said product to purchase said product in the belief (1) that said product is the result of many years of scientific research in the United States and foreign countries and that (2) respondent maintains laboratories where Fayro is scientifically mixed by chemists. The respondent's acts and practices hereinabove set forth have the capacity and tendency to divert trade to respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of respondent in the sale and distribution of Fayro, under the circumstances and conditions set forth herein are to the prejudice of the public and of respondent's competitors, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, briefs and arguments of counsel; and the Commission, having made its findings as to the facts and its conclusion that respondent has been, and is, using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Order

It is now ordered, That respondent, Fayro Laboratories, Inc., its officers, agents, representatives and employees, in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States, of the product Fayro bath salts, shall cease and desist:

(1) From using the word "laboratory" or the word "laboratories" or any other word of words of like import upon containers or wrappers of said bath salts, or on labels or brands thereof, or in booklets, on stationery, in letters, circulars, newspapers, magazines or otherwise;

(2) From representing that respondent maintains or has access to a laboratory in which said Fayro bath salts are mixed or prepared for sale;

(3) From representing that the formula from which Fayro bath salts is prepared is or has been scientifically evolved or is a scientific formula or that Fayro bath salts is scientifically mixed or prepared, or that the same is the result of many years of scientific research or is the result of scientific research at all;

(4) From representing by pictorial devices or otherwise that chemists or other scientists have or have had anything to do with the making, compounding, mixing or preparing of Fayro bath salts or with the evolving of the formula thereof or that they or any of them have made laboratory tests of the product, Fayro;

(5) From representing that respondent has or had put chemists to work to ascertain or obtain the analysis of the water of twenty-two or any of the famous hot springs of the world or that such chemists have made comparison of analyses of any of the waters of such hot springs with Fayro bath salts and from giving the results of such purported analyses and comparisons;

It is further ordered, That the respondent, Fayro Laboratories, Inc., shall within 60 days after the service upon it of a copy of this order to cease and desist, 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 hereinbefore set forth.

IN THE MATTER OF

JOHN MCGRAW, E. A. GLENNON, COPARTNERS DOING
BUSINESS UNDER THE NAME OF ROYAL MILLING
COMPANY, ETC., AND INDIVIDUALLY

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

Docket 1597. Complaint, Sept. 3, 1929¹—Decision, Apr. 16, 1931

Where a firm engaged in the purchase, mixing and sale of plain or phosphated, and self-rising, flour, to dealers in the southeastern States particularly, in competition with others similarly engaged, and also with those actually grinding wheat into flour and making and selling such products,

- (a) Adopted trade names including the word "milling", representing themselves as "Royal Milling Co.", "Richland Milling Co.", or "Empire Milling Co.", and as manufacturers of flour, with a daily capacity of 1,000 or 1,500 barrels, as the case might be, and displayed said names on the containers of their products, together with a brand name and designation of type of flour, such as "Silver Dawn. Superlative Self-Rising Flour", "Clover Leaf. Superlative Patent Flour", etc.; notwithstanding fact they ground no wheat and had no machinery or plant (with its many fold greater investment) for so doing and for carrying out the refined, complex and scientific processes involved in modern manufacture of flour, nor laboratory for ascertaining through chemical tests gluten, protein, and other content and characteristics thereof and maintaining the quality, standards, and uniformity of brands, but used regularly only the so-called inadequate and unscientific paddle test, and belonged to that class of concerns long known as blending plants, and were not mills, milling companies or manufacturers of flour, as long generally understood by dealers and consumers, many of whom believe that in purchasing flour directly from the concern grinding the wheat they secure a more uniform product or a better one for less money through elimination of middlemen's profits or costs, and prefer so to deal; and

- (b) Made such false and misleading statements in letters, circulars and literature distributed among the trade as "* * * Half your profit is in the buying; Order direct from the mill and save this yourself * * *". "The scarcity of soft red wheat of good milling quality is becoming more acute each day * * * It has always been our policy to give our customers opportunity to take care of their requirements before an advance * * *. Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis * * * When you buy from us we save you money, as we do not sell through salesmen, brokers or jobbers, but go direct to the retail grocer and sell him at jobbing prices and you will find it much to your interest to buy on this plan";

With result that many dealers and consumers purchased their product as and for that of concerns grinding wheat into flour, and with capacity and tendency to divert trade to them from concerns actually so doing and selling their flour in the southeastern section of the United States, and

¹ Amended.

Complaint

from concerns engaged in the same character of business as themselves and selling their product in the aforesaid section without using such words or terms in the names under which they did business, or representing themselves as manufacturers of flour, and with effect of so doing;

Held. That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Baldwin B. Bane for the Commission.

Mr. Thomas H. Malone of Nashville, Tenn., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged at Nashville in the purchase of wheat flour from millers in the Middle West, and in the blending and mixing thereof, and addition thereto, in some cases, of leavening agents, such as baking powder, to produce "self-rising flour," and in the sale of said products to dealers in various States, and largely to retail grocers, whose orders they solicit through the mail service, and with place of business in Nashville, with assuming or using misleading trade name, misrepresenting business status or advantages, advertising falsely or misleadingly, and misbranding or mislabeling, in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, and neither owning nor operating any mill or machinery other than devices for blending or mixing lots and grades of flours purchased from millers, as above stated, and adding leavening agents, and manufacturing "no flour by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour," and owning or operating "no mill or machinery fitted for that purpose," operate under the trade names Royal Milling Co., Empire Milling Co., and Richland Milling Co., using such statements in the conduct of their business as "Royal Milling Co., Plain Patent Self-Rising. Daily Capacity 1,500 Barrels." "Richland Milling Co., Manufacturers of High Grade Flour, Nashville, Tennessee. Daily Capacity 1,000 Barrels." "Empire Milling Co., Manufacturers of High Grade Flour. Daily Capacity 1,500 Barrels," and in their letters soliciting orders "use other representations implying that they are manufacturers of flour as above described," further packing and delivering their aforesaid products in cotton or other bags upon which are conspicuously stamped their aforesaid trade names, together with such

descriptions of the contents as "Standard Patent Self-rising Flour", "Fancy Patent Self-rising Flour", "Best Patent Self-rising flour", "Superlative Self-rising Flour", "Superlative Patent Plain", and other similar descriptions.

Respondents, as alleged, in so carrying on their business, are in competition with others "likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extract therefrom the product known as flour; or purchase the flour they offer for sale, whether in plain or self-rising form, and do not in their trade names or otherwise in the conduct of their business use the terms 'mill,' 'mills,' 'millers' or 'milling' or otherwise represent that they are engaged in the manufacture of flour as above described."

The use by respondents, as charged, "of the trade name 'Royal Milling Co.', 'Empire Milling Co.', and 'Richland Milling Co.' in their business and the representations in their business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flour to believe that in purchasing their products they are buying direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of their flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make as above described the flour they offer for sale and with sellers of plain and self-rising flour likewise engaged in interstate commerce who do not so manufacture but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered

into between counsel for the respondents and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondents and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, John McGraw and E. A. Glennon, are partners conducting business under the names Royal Milling Co., Richland Milling Co. and Empire Milling Co. In 1917 respondents bought the business of one R. C. Lindsey who operated under the trade name Royal Milling Co. They later adopted and used also the names Richland Milling Co. and Empire Milling Co. Respondents' place of business is located in Nashville, Tenn. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. They then pack the flour in bags under brands of their respective trade names, and sell it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondents buy the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tenn., from which point they ship the flour to their customers. In the course and conduct of their business respondents are in competition with other co-partnerships, individuals and corporations engaged in the sale of flour in interstate commerce.

PAR. 2. Respondents put the flour which they buy from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda, and phosphate. If it is not to be self-rising a little phosphate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry

it to the reel or sifter, from whence it goes after being sifted into hopper bins, and thence to the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondents sell from five to eight brands under each trade name, but each brand does not represent a different grade or quality of flour. It takes from ten to fifteen minutes to run the flour through the equipment used by respondents. The cost of the machinery in such a plant as the respondents', having a capacity of 3,000 barrels a day on a 24-hour run is approximately \$20,000 to \$25,000, and the total investment approximately \$150,000 to \$200,000. The replacement value of respondents' plant and machinery is approximately \$40,000.

PAR. 3. The grinding of wheat into flour has developed by various steps until to-day it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) Cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A 5-break mill has 18 spans of rolls and 32 separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics

and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of flour." Bolting or sifting has been done by the concerns grinding the wheat into flour in this country from the earliest times. The number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens it. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour can not be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: Patent flour, which means that part of the stream of flour which is left after taking off a greater or less per cent of the inferior flour—it is the best flour made by the mill; straight flour, which means 100 per cent flour, all the flour that is extracted from the wheat berry; clear flour is the flour taken off by the mill after the patent flour has been removed; low-grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about \$600,000, and the total investment between \$1,000,000 and \$1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from 8 hours to 50 or 60 hours, due to differences in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half hour to one and a half

hours, depending upon the number of breaks and boltings used by the concern.

PAR. 4. Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about 75 years ago. The self-rising flour business was originated or begun in Nashville, Tenn., by a Doctor Owsley. He operated under the name Owsley Flour Co. and sold through the Southeastern States. This company was succeeded by the Ford Flour Co. about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondents sell in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondents and who do not represent themselves as mills or milling companies, or manufacturers of flour.

PAR. 5. Nashville, Tenn., is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

PAR. 6. Respondents do not have or maintain a laboratory for testing or analyzing the flours which they buy or sell. They use regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the characteristics or qualities of the flour, such as gluten content, protein content, moisture content, starch content, etc., can not be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching

agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour can not be determined by the paddle test, and respondents by this test can not maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondents' plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

PAR. 7. Respondents represent themselves as "Royal Milling Co. Daily Capacity 1,500 Barrels;" "Richland Milling Co. Manufacturers of High Grade Flour. Daily Capacity 1,000 Barrels;" "Empire Milling Co. Manufacturers of Highest Grade Flour. Daily Capacity 1,500 Barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

No jobbers, salesmen, brokers, bookkeeping. *Half your profit is in the buying!* Order direct from the mill and save this yourself. We offer delivered your depot, basis 24-pound sacks, our high-grade flour, as follows.

And—

The scarcity of soft red wheat of good milling quality is becoming more acute each day, and with a good demand for flour we can see nothing to prevent prices from working higher. It has always been our policy to give our customers opportunity to take care of their requirements before an advance, and believe you will find it to your advantage to book your needs for at least 60 days now. * * *

Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis, baking tests, and the statements of those who sell and use our flour. * * *

When you buy from us we save you money, as we do not sell through salesmen, brokers or jobbers, but go direct to the retail grocer and sell him at jobbing prices and you will find it much to your interest to buy on this plan.

PAR. 8. The containers for respondents' flour have on them the trade name under which they are selling the particular flour, such as "From Royal Milling Co.," "From Richland Milling Co.," "From Empire Milling Co." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Silver Dawn. Superlative Self-Rising Flour," "Clover Leaf. Superlative Patent Flour," "Royal. Best Patent Self-Rising Flour," "Aviator. Highest Patent Plain Flour," "Best Yet. Standard Patent Self-Rising Flour," "Security. Self-Rising Flour," "Martha White. Highest Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low-grade or off-grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

PAR. 9. When the term "mills" or "milling company", or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middlemen's profit or costs. Many persons, dealers and consumers, have been buying respondents' flour believing them to be, because of the use of such words or terms in the names under which they do business and because of their representation that they are "manufacturers of flour," a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondent's use of such words or terms in the

names under which they do business and their representation that they are manufacturers of flour tend to and do divert trade to respondents from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States and from concerns engaged in the same character of business as respondents and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business or represent that they are manufacturers of flour.

CONCLUSION

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, John McGraw and E. A. Glennon, co-partners, doing business under the names of Royal Milling Co., Richland Milling Co., and Empire Milling Co., as co-partners and individually, their representatives, agents and employees and the representatives, agents and employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words "milling company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the indi-

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vidual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations.

It is further ordered, That the respondents above named within 60 days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date, promulgated similar findings and orders against six other Nashville concerns as noted below, paragraphs 1, 7 and 8 of the respective findings being reproduced to set forth the varying identities, and business histories of respondents and terminology and representations employed by them.

Appearances in these cases were *Mr. Baldwin B. Bane* for the Commission and *Mr. Thomas H. Malone* of Nashville, Tenn., for respondents.

Statement referred to follows:

D. V. JOHNSON, doing business under the name of Tennessee Grain Co. and Tennessee Milling Co., Docket 1598 (selling 10 brands under the trade name employed, though not a different grade or quality of flour under each brand, and with a plant value of approximately \$50,000, and a total investment of approximately \$200,000, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, D. V. Johnson, an individual, conducts business under the trade name Tennessee Grain Co. and Tennessee Milling Co. Respondent began business in 1905 as a grain dealer under the name Tennessee Grain Co. He continued in business as a grain dealer under this name until about 1920. About the year 1920 machinery was installed by respondent for the grinding of feed and whole wheat flour. Respondent is not now engaged in the grinding of feed or whole wheat flour but his plant is equipped for such although in a limited way as compared with the flour which he mixes and sells as described below. Respondent is now and has been since about 1925 or 1926 engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-

rising flour. He then packs the flour in bags under brands of his trade name, and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to him at Nashville, Tenn., at which point his place of business is located, and from which point he ships the flour to his customers. In the course and conduct of his business respondent is in competition with other individuals, corporations and partnerships engaged in the sale of flour in interstate commerce.

PAR. 7. Respondent represents himself as "Tennessee Grain Co. and Tennessee Milling Co. Receivers and Shippers of Grain. Manufacturers of Soft Wheat Flour." In the letters, circulars and literature which respondent circulates among the trade in his efforts to sell flour he makes such statements as the following:

We have no salesmen in your territory and can make very close prices on flour orders sent in direct.

And—

Eventually you will see the best flour is Tennessee.

And—

"Tennessee" plain flour and "Diamond T" self-rising guaranteed to be as good as any flour regardless of brand or price.

PAR. 8. The containers for respondent's flour have on them the trade name under which he sells the flour as "From Tennessee Grain Co. and Tennessee Milling Co." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour as follows: "Commodore. Superlative Patent Flour," "White Gold. Best Fancy Patent Flour." "Diamond T Self-Rising Superlative Flour," "Golden South. Superlative Patent Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent's bags, labels, or containers, or in any of his literature as descriptive of any of his flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

NASHVILLE ROLLER MILLS ET AL., Docket 1599 (selling from five to six brands under each trade name employed, though not a differ-

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ent grade or quality of flour under each brand, and with a replacement value of respondent corporation's plant and equipment of approximately \$155,000 and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, Nashville Roller Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. The respondents, John Schultz, Louis Baujan and Vernon S. Tupper, are the president, vice president and secretary and treasurer respectively of said respondent corporation and conduct, manage, control and direct its business. Respondents' place of business is located in Nashville, Tenn. Respondent, Nashville Roller Mills, conducts business under its own name and under the trade names of Cumberland Valley Milling Co., Belle Meade Mills, and The Red Mill, the last of which names is largely used in connection with the name Nashville Roller Mills as a descriptive term. Respondent, Nashville Roller Mills, is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. It then packs the flour in bags under brands of its own or its trade names and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to it at Nashville, Tenn., from which point it ships the flour to its customers. In the course and conduct of its business respondent is in competition with other corporations, partnerships and individuals engaged in the sale of flour in interstate commerce. From 1908 until July, 1913, respondent corporation operated a plant grinding wheat into flour. This plant was burned in July, 1913. Respondent corporation did not rebuild a plant to grind wheat into flour after this fire but built and has since operated a plant for conducting a business as described above.

PAR. 7. Respondent corporation represents itself as "Nashville Roller Mills. The Red Mill. Quality Flour"; "Cumberland Valley Milling Co. Flours of Quality. Plain and Self-Rising"; "Belle Meade Mills. Quality Flour"; "The Red Mill. Flours of Quality." In the letters, circulars and literature which respondent corporation circulates among the trade in its effort to sell flour it makes such statements as the following:

The May option in wheat has been very interesting—that is, to those equipped with steady nerves and able to withstand shock. The last days of the week have seen a bewildering series of flights and nose dives, very spectacular but not noticeably soothing.

But May wheat, thank heaven, has gone into the discard. True, the old crop has a few weeks of life left, but the new crop will now have the spotlight. * * *

Be they never so abstemious, the people are going to consume a whole lot of flour before new crop wheat is to be had; and you and I would be remiss should we fail to continue to function with diligence and effectiveness. May we have your active backing to the end that this coming month of June may be prolific, not only for brides but particularly in volume of business on Red Mill flours.

And—

Pending the time when new wheat is actually on the market, the trade would do well to bear in mind that old wheat stocks—and it is from old wheat exclusively whence our supplies of flour for the ensuing several weeks must come—are low, unusually low. Under the circumstances, it is scarcely likely that any severe break will develop for quite a bit of a while.

PAR. 8. The containers for respondent corporation's flour have on them the name under which it is selling the particular flour such as "From Nashville Roller Mills," "From Cumberland Valley Milling Company," "From The Red Mill, Makers," "Manufactured For From Belle Meade Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Rising Sun. Superlative Self-Rising Flour," "Gloria. Supreme Patent. The Best Manufactured," "Bride's. Superlative Self-Rising Flour," "Spinning Wheel. Best Soft Winter Wheat Patent Flour," "Ace of Aces. Supreme Patent Flour," "Conqueror. Fancy Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent corporation's bags, labels or containers, or in any of its literature as descriptive of any of its flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

SNELL MILLING CO. ET AL., Docket 1600 (selling from 7 to 13 brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, Snell Milling Co., is a corporation organized and existing under the laws of the State of Tennessee with its office and place of business in Nashville, Tenn. Respondent corporation was organized in 1925. Thomas E. Snell is president and J. A. Stevens is vice president of respondent corporation. Respondents, Thomas E. Snell and J. A. Stevens, manage, control and direct the business of respondent, Snell Milling Co. Respondent Percy Myatt has no connection officially or otherwise with said respondent corporation and was not connected with it at the time the complaint herein was filed. Respondent corporation conducts business under its own name and also under the trade names Peabody Mill Co. and Mero Mills. Respondent corporation is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. It then packs the flour in bags under the brands of its respective trade names, and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent corporation buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to it at Nashville, Tenn., from which point it ships the flour to its customers. In the course and conduct of its business respondent corporation is in competition with other corporations, partnerships, and individuals engaged in the sale of flour in interstate commerce.

PAR. 7. Respondent corporation represents itself as "Snell Milling Co. Manufacturers of High Grade Flour;" "Peabody Mill Co. Manufacturers of Quality Flour;" "Mero Mills. Manufacturers of Quality Flours." In the letters, circulars and literature which respondent corporation circulates among the trade in its efforts to sell flour it makes such statements as the following:

When you look at the price below, and compare with prices of other mills, you will figure it is impossible for any mill to put out a guaranteed flour at such an unheard of low price, and you lay this letter aside and not order. * * * You can always save yourself money by paying cash. This mill is simply run on a cash proposition. That's the reason these prices are possible.

And—

The volume of business that any mill does is one of the main factors that serve to hold the price down. This is the principle upon which this mill is built.

And—

You understand we are able to give you this discount because we will sell to you direct and not through a wholesale jobber, for as you perhaps know 40 cents per barrel is considered the legitimate profit of the jobber, but when you buy flour direct from us we feel that we can give you the benefit of this jobber's profit.

And—

There can be no doubt but what the above prices are much too cheap considering the present market and what it is costing us to make our brands of flour, and it is our suggestion to our customers that they mail us either an order or a booking immediately so as to be sure and get the benefit of these prices.

And—

As you will note we make no difference in price for plain and self-rising flour of the same grade, although it is customary with a great many mills to charge 25 cents per barrel over the plain for self-rising of the same quality. We invite your comparison of these prices with other mills, and will be glad to have you call us over 'phone or wire us our expense if interested.

PAR. 8. The containers for respondent corporation's flour have on them the corporate or trade name under which it is selling the particular flour such as "Snell Milling Co.," "Peabody Mill Co.," "Mero Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Queen of the South. Superb Patent Flour," "Early Dawn. Standard Patent Flour," "Fortune. Superb Self-Rising Flour," "Daddy Gander. Self-Rising Flour," "Melva. Highest Patent Flour," "Red Hat. Highest Patent Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent corporation's bags, labels, or containers, or in any of its literature as descriptive of any of its flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

FRANCIS J. MCCARTHY, doing business as Watauga Milling Co., etc., Docket 1601 (selling from five to eight brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, Francis J. McCarthy, an individual, conducts business under the trade names Watauga Milling Co., Modern Milling Co., F. J. McCarthy Milling Co., and Southern Flour Mills, and for a time conducted business under the name Star Mills also. He adapted the trade name Watauga Milling Co. when he went in business in 1921. He began operating also under the name F. J. McCarthy Milling Co. in 1925, and under the names Southern Flour Mills and Modern Milling Co. in 1926. He operated also under the name Star Mills during 1927 and part of 1928. Respondent's place of business is located in Nashville, Tenn. Respondent is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. He then packs the flour in bags under brands of his respective trade names, and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to him at Nashville, Tenn., from which point he ships the flour to his customers. In the course and conduct of his business respondent is in competition with other individuals, co-partnerships, and corporations engaged in the sale of flour in interstate commerce.

PAR. 7. Respondent represents himself as "Watauga Milling Co. Pioneer Manufacturers of Self-Rising Flour. Capacity 2,400 Barrels Per Day;" "Modern Milling Co. Manufacturers of Flour. Capacity 1,500 Barrels Per day;" "Southern Flour Mills. Manufacturers Of High-Grade Flour. Capacity 2,000 Barrels Per Day;" "F. J. McCarthy Milling Co. Pioneer Manufacturers of Self-Rising Flour. Nothing But High-Grade Flour. Capacity, 2,400 Barrels Per Day." In the letters, circulars and literature which respondent circulates among the trade in his efforts to sell flour he makes such statements as the following:

We can save you money on your flour purchases through our Direct-To-The-Trade plan of selling flour, as you can buy from us at first cost and cut out the profit of the middleman.

We have a large established trade on flour, and quantity production enables us to make it at very low cost per barrel. You will get the benefit of this saving. * * * Why pay premium prices for flour when you can buy from us under our Direct-To-The-Trade plan at a big saving? We have over twenty years' experience in the manufacture of flour and can save you money the year round.

And—

We are putting out the finest grade of flour that can be made from wheat under our brands of Superb, Quality, Select, Belvedere, and Glo-Light. We are selling this high-grade flour under a money-back guarantee to the most discriminating trade at prices ranging from one to two dollars per bbl. under fine flour of similar quality. If you want quality at low cost we have it under these brands, and you will note we do not offer anything but high-grade flour.

And—

Mills have been compelled to advance prices again during the past week due to the growing scarcity of soft red winter wheat which Southerners use in biscuit flour, and this class of flour will sell higher. We have the volume that enables us to make you prices on flour that will meet or beat all legitimate competition.

PAR. 8. The containers for respondent's flour have on them the trade name under which he is selling the particular flour, such as "From Watauga Milling Co.," "From Modern Milling Co.," "From Southern Flour Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour, such as "Dixie Maid. Best Self-Rising Flour," "Superb Superlative Self-Rising Flour," "Eagle. Standard Self-Rising Flour," "Lion. Finest Patent Self-Rising Flour," "White Star. Standard Plain Flour," "Belvedere. Highest Patent Flour," "White Fawn. Best Plain Flour," "Supreme. Best Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent's bags, labels, or containers, or in any of his literature as descriptive of any of his flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

J. A. WELLS ET AL., doing business as State Milling Co. and Myracle Milling Co., and individually. Docket 1602 (selling from three to six brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondents, J. A. Wells, J. M. Wilkerson, H. P. Johnson, and Mrs. H. P. Johnson conduct business under the names State Milling Co. and Myracle Milling Co. They have conducted such business since January 1, 1924, when they purchased the good will and equipment of a predecessor which had conducted the same

business under the name State Milling Co. since about 1912. Respondents' place of business is located in Nashville, Tenn. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour.

They then pack the flour in bags under brands of their respective names, and sell it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondents buy the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tenn., from which point they ship the flour to their customers. In the course and conduct of their business respondents are in competition with other co-partnerships, corporations and individuals engaged in the sale of flour in interstate commerce.

PAR. 7. Respondents represent themselves as "State Milling Co. Manufacturers of High Grade Flours. Daily Capacity 500 Barrels," and "Miracle Milling Co. High Grade Flour. Daily Capacity 500 Barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

Our products are made from select wheat in a perfectly equipped mill by millers who know how.

And—

We are very anxious for you to give our flour a trial for it is made from the best No. 2 red wheat which produces a product unequalled and our overhead is very light which enables us to sell cheaper than most of our competitors.

We are selling considerable flour in your state, both in carload lots and in smaller amounts and it is giving universal satisfaction. Each bag leaving our Mill carries an absolute Guarantee of Perfect Satisfaction or Money Refunded.

And—

We are glad to be able to give you advantage of the exceedingly good purchases we have made in wheat and we now call your attention to our GREATLY REDUCED PRICES. We believe this is the opportune time for you to buy and feel you will make no mistake in replenishing your stock to its full capacity.

When you buy from us you are buying direct from the mill, thereby eliminating all unnecessary middleman's profit. Our flour is made from No. 2 soft red wheat acknowledged to be the best wheat grown for the manufacture of flour, and we invite a comparison of its quality with any other flour regardless of price.

And—

For the past six weeks we have had a nice stock of wheat on hand and have been giving you the advantage of it by quoting you considerable lower than the market, however our supply bought on the lower market is about exhausted and today cash wheat is very strong and shorts and bran have gone up some \$4 per ton making flour advance in proportion to this. We have held off as long as we can and we are now forced to raise prices but we are going to make the smallest possible one in order to get by. You will not be able to duplicate the quality of our flour elsewhere without paying quite a bit more and we trust you will let us **SERVE YOU ALL YOUR NEEDS.**

PAR. 8. The containers for respondents' flour have on them the trade name under which they are selling the particular flour such as "Manufactured by State Milling Co.," "Manufactured by Miracle Milling Co." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Red Bird. Self-Rising Flour," "Southern Maid. Superlative Patent Flour," "Wonder Worker. Standard Patent Flour," "No Peer. Highest Patent Flour," "Every Woman. High Quality Flour," "Alfixt. Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low-grade or off-grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

E. C. FAIRCLOTH, SR., ET AL., doing business as Cherokee Mills and individually. Docket 1604 (selling from four to seven brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondents, E. C. Faircloth, jr., F. B. Evers, estate of C. K. Evers and estate of E. C. Faircloth, sr., are members of a partnership which conducts business under the names Cherokee Mills and Tennessee Flour Co. The business of this partnership was begun under the name of Cherokee Mills in 1910 by E. C. Faircloth, sr., and C. K. Evers. E. C. Faircloth, sr., died March 13, 1929. Respondents' principal place of business is located in Nashville, Tenn., but they also operate a branch in Birmingham, Ala., which was established in 1922. Respondents are engaged in the business of

buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. They then pack the flour in bags under brands of their respective names and sell it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondents buy flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tenn. or Birmingham, Ala., from which points they ship the flour to their customers. In the course and conduct of their aforesaid business respondents are in competition with other co-partnerships, corporations and individuals engaged in the sale of flour in interstate commerce. In addition to the above described business respondents on a much smaller scale and in a much smaller way are also engaged in making a mixed feed for cattle or other animals but not for human consumption. Respondents produce this mixed feed by the grinding together of wheat, corn, hay, alfalfa, etc. The making of this mixed feed is carried on by separate and different machinery from that used in the mixing of the flour, the unit for the making of this mixed feed being a separate part of the general plant. This mixed feed unit of the Nashville plant has been in operation for about six years.

PAR. 7. Respondents represent themselves as "Cherokee Mills. Quality Flour. Daily Capacity 2,000 barrels;" "The Tennessee Flour Co. Quality Flours. Daily Capacity 1,000 barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

In the Southwest the growing wheat is coming along nicely and they have prospects of the biggest yield in recent years but this is offset by late planting and consequent lowered conditions to the north, and the Southwest crop is entering now upon a period that is most dangerous to its welfare, and being perfect at the present, its future course, if it changes at all, must be downward.

As to the soft red wheat there is little to be had and while we favor the market for May only, it may be that wheat will grow steadily stronger until the new crop is harvested, which will be some time in July.

And—

The wheat market during the past week having remained practically stationary we are not making a change in our flour prices today, but we continue to lean to the belief that an advance of considerable proportion will take place during this month of May, and that you are absolutely safe in buying your flour requirements as far ahead as June 1st.

And—

Wheat is up still more since we quoted you last Saturday, and we note that a number of mills have still further advanced their flour prices, but we propose to stick to our present levels just as long as we possibly can. However, at the rate we are shipping out "TIP-TOP" and our other brands our stocks will speedily diminish. One of the largest millers in the United States was in our office today, and in talking of general conditions the writer asked him his opinion on the soft red wheat for the remainder of this crop, and we are pleased to say that his idea coincided with ours in that he looks for another 10 cents per bushel at least between now and June, which would be in round numbers 50 cents per barrel on flour above our present price.

And—

Please remember that in our flours you are getting an entirely soft red wheat article, perfectly uniform and absolutely guaranteed, and again we caution you to look out for the numerous brands being shipped into the Southeast that are milled from hybrid wheats, and which will not give satisfaction to housewives accustomed to soft flour.

And—

We have not been, nor will we be from present indications, friendly to stronger prices on wheat as a whole, but we do believe that soft red wheat is good property, and will be at any time during the remainder of this crop year. We have accumulated considerable supplies and are able to offer entirely soft red wheat flour in all our grades, and the prices that we quote do not nearly reflect replacement costs.

And—

Soft wheat continues to climb, and even at the price it is bringing now there is little to be had. We therefore consider ourselves fortunate indeed in that we have protected our requirements for the spring months and can guarantee delivery of an entirely soft wheat flour in all our grades.

There are a number of flours being offered to the southern trade at this time that are made entirely from semi-hard or low protein wheat, and while these can be had at a considerable discount we doubt that it is wise to buy them for they will not give satisfaction where housewives are accustomed to soft red wheat flour.

PAR. 8. The containers for respondents' flour have on them the name under which they are selling the particular flour such as "Cherokee Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Tip-Top. Finest Patent Flour," "Tip-Top. Superlative Self-Rising Flour," "Cherokee Chief. High Patent Flour," "Blue Bonnet. Fancy Self-Rising Flour," "Ready To Bake. Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags,

labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Syllabus

IN THE MATTER OF

MAX KENNER AND SAMUEL GRAUBARK, COPARTNERS
TRADING AS AMUSEMENT NOVELTY SUPPLY COM-
PANY

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

Docket 1763. Complaint, Feb. 21, 1930—Decision, Apr. 16, 1931

Where a firm engaged in sale of novelty goods such as knives, pipes, dolls, etc. to jobbers, retailers, and circus and amusement park concessionaires; in describing their products through catalogues, price lists, and other printed advertising matter,

- (a) Represented canes, manicure sets, toilet sets and other articles as "amber", "pearl on amber", "gold on amber" and "grained ivory" and brooches sold for \$6 a dozen as "cameo", facts being former articles were pyroxylin or celluloid and contained no gold, ivory or pearl, and latter were not made of that substance ordinarily known to public and trade as cameo;
- (b) Represented handles of carving sets as "stag" and articles such as bread and serving trays and water pitchers, as "engraved", facts being said handles were not carved from antlers and said trays, etc., had not been engraved, but were etched or stamped;
- (c) Falsely represented rayon goods containing no silk as "silk" and "rayon silk", and billfolds, key cases and other articles not made of seal leather, as "genuine pin seal" and "genuine hudson seal"; and
- (d) Applied words "Army and Navy" to field glasses neither purchased from nor made by or for the United States Government, nor in accordance with its specifications or requirements, and applied to jewelry, belt buckles, cuff button sets, stick pins and other articles words "Sapphire", "platinoid finish" or "diamond", as the case might be, facts being so-called sapphires were imitation and synthetic stones, belt buckles, etc., contained no platinum, and "diamonds" were not carbons in their crystalline state, entitled to be so designated;

With capacity and tendency to mislead and deceive customers and ultimate purchasers from such customers in respect of the substance and character of aforesaid articles and to divert trade to said firm from competitors similarly engaged without thus misrepresenting their merchandise:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission.

McGovern, Erb & Lehr of Buffalo, N. Y., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Max Kenner and Samuel Graubark, individuals engaged as partners under the name Amusement Novelty Supply Co., in the advertisement, offer and sale of such novelties as knives, pipes, watches, etc., to purchasers in the various States, and with their principal office and place of business in Elmira, N. Y., with advertising falsely or misleadingly as to composition, nature, source and origin of products dealt in, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged, as above set forth, make false and misleading representations in their catalogues, price lists and other printed advertising matter as to the articles dealt in by them, as follows:

Canes, manicure sets, toilet sets and other articles as "amber", "pearl on amber", "gold on amber", and "grained ivory" and brooches sold for \$6 a dozen as "cameo", facts being articles first referred to contain no gold, ivory or pearl but are pyroxylin or celluloid and brooches are not of that substance commonly known to the trade and public as "cameo".

Handles of carving sets as "stag" and articles such as bread and serving trays and water pitchers as "engraved" facts being said handles are not carved from antlers and trays and pitchers are not engraved, but etched or stamped.

Certain rayon goods containing no silk as "silk", and billfolds, key cases and other articles containing no seal as "genuine pin seal".

Field glasses neither purchased from nor made by nor for the United States Government nor in accordance with its specifications or requirements as "Army and Navy".

Certain jewelry as "sapphires", stones being imitation and synthetic, and certain belt buckles, cuff button sets and other articles containing no platinum as "platinoid finish".

Stones in stick pins and other jewelry as "diamond", facts being such stones are not carbons in their crystalline state and can not fairly and truthfully be described as diamonds.

The foregoing "statements, representations, and practices of the respondents, and each of them", as alleged, "have the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the various States of the United States as to the

quality, substance, and value of the products so advertised, offered for sale, and sold; and the aforesaid acts and things", as charged, "are to the prejudice of the public and the competitors of the respondents and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondents, Max Kenner and Samuel Graubark, copartners trading as Amusement Novelty Supply Co., charging them with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

The respondent Max Kenner having entered his appearance and filed his answer to the complaint herein, and the respondent Samuel Graubark having failed to answer, hearings were had and evidence was introduced upon behalf of the Commission and respondents before a trial examiner of the Commission duly appointed thereto.

Thereupon this proceeding came on for final hearing, counsel for respondents having waived the filing of brief and oral argument, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents are individuals who, since prior to the year 1926, have been engaged in a partnership enterprise trading as the Amusement Novelty Supply Co. in the city of Elmira, State of New York. Samuel Graubark or "Graubart", as he is also known, has not been connected with this partnership for a number of years, and Max Kenner is now and has been for two years last past sole proprietor. The business consists of selling and distributing in commerce between and among the various States of the United States various novelty goods, such as knives, pipes, dolls, toilet sets, pocket books, canes, pillows, field glasses, and imitation jewelry, to jobbers, retailers, circus and amusement park concessionaires, and causing the said goods when sold to be shipped from their place of business at Elmira, N. Y., to the purchasers thereof located in various

other States of the United States. In the course and conduct of the aforesaid business respondents are in competition with other corporations, individuals, and partnerships engaged in selling and distributing in interstate commerce articles of a like nature.

PAR. 2. In the course and conduct of their aforesaid business, by the circulation and use of catalogues, price lists, and other printed advertising matter, respondents have represented and do represent to their purchasers and prospective purchasers in the various States of the United States, through the use therein of such words as "amber", "pearl on amber", "gold on amber", and "grained ivory" in connection with certain canes, manicure sets, toilet sets, and other articles so sold, advertised, and offered for sale, that said articles contain the substances so quoted, whereas in truth and in fact said articles contain no gold, ivory, or pearl, and are of pyroxylin or celluloid materials; through the use of the word "cameo" that certain brooches sold in dozen lots for \$6 per dozen are of the substance ordinarily and commonly known to the public and trade as "cameo", whereas in truth and in fact such is not the case; through use of the word "stag" in connection with certain carving sets that the handles of the pieces thereof are carved from antlers, whereas in truth and in fact such is not the case; through use of the word "engraved" in connection with certain articles such as bread and serving trays and water pitchers, that said articles have been subjected to the process commonly and ordinarily known and recognized as engraving, whereas in truth and in fact said articles are not engraved but are etched or stamped; through the use of the word "silk" and the words "rayon silk" in connection with certain rayon goods, that said goods are composed in whole or in part of silk, whereas in truth and in fact said goods contain no silk; through use of the words "genuine pin seal" and "genuine hudson seal" in connection with billfolds and key cases and other articles, that the said articles are made of seal leather, whereas in truth and in fact there is no seal in the composition of said articles; through the use of the words "Army and Navy" in connection with certain field glasses, that said articles were purchased from or were manufactured by or for the United States Government, or made in accordance with specifications or requirements of the United States Government, whereas in truth and in fact the said field glasses neither were purchased from nor manufactured by or for the United States Government nor made in accordance with its specifications or requirements; through the use of the word "sapphire" in connection with certain jewelry, that said jewelry is of the substance known as "sapphire", when in truth and in fact said stone is of

imitation and synthetic stones; through the use of the words "platinoid finish" in connection with certain belt buckles, cuff-button sets, and other articles, that said articles contain some platinum, when in truth and in fact said articles contain no platinum; through use of the word "diamond" in connection with certain stones in stick pins and other jewelry, that said stones are carbons in their crystalline state, whereas in truth and in fact the said stones are not carbons in their crystalline state and can not fairly and truthfully be described as diamonds. All of these representations are admitted by respondents to have been made, and are acknowledged by them to be untrue.

PAR. 3. The Commission finds that the foregoing representations have a capacity and tendency to mislead and deceive the customers of respondents and the ultimate purchasers from such customers, throughout various States of the United States, into the erroneous belief that, in purchasing various and sundry articles from respondents, they are purchasing articles of a substance, material, and character as described by respondents, and that said misrepresentations have a capacity and tendency to divert trade to respondents from competitors also engaged in interstate commerce, who do not so misrepresent the substance, material, and character of their merchandise.

CONCLUSION

The practices of said respondents and each of them, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to respondents' competitors, are unfair methods of competition in commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the record, the answer of respondent Max Kenner, the respondent Samuel Graubark having been duly served and failed to answer, and both respondents having waived oral argument and brief, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Order

15 F. T. C.

It is now ordered, That the respondents, Max Kenner and Samuel Graubark, trading as Amusement Novelty Supply Co., and each of them, and all their several agents and employees, in connection with the sale or distribution in interstate commerce of the following articles, do cease and desist as follows:

1. From using the words "amber", "pearl on amber", "gold on amber", "grained ivory", in describing its canes, manicure sets, toilet sets, or other articles, unless and until said articles shall contain or be composed of the descriptive substance.

2. From use of the word "cameo" in describing brooches or other jewelry or ornaments unless and until said jewelry or other ornaments shall be composed of or contain that substance ordinarily and commonly known to the public and trade as "cameo".

3. From the use of the word "stag" in describing carving sets, the handles of the pieces thereof which are not carved from antlers.

4. From the use of the word "engraved" in describing bread and serving trays, water pitchers, and other similar articles, which are not engraved but which are etched or stamped.

5. From the use of the word "silk", whether alone or with the word "rayon", in describing fabrics composed neither in whole nor in part of genuine silk.

6. From use of the words "genuine pin seal" or "genuine hudson seal" in describing billfolds, key cases, or other articles, unless and until said articles shall be composed of or contain genuine seal.

7. From use of the words "Army and Navy" in describing field glasses which were neither manufactured by, for, nor in accordance with specifications or requirements of, the United States Government.

8. From use of the word "sapphire" in describing jewelry which is composed of synthetic or other stone, and which is not of the substance ordinarily known to the trade as "sapphire".

9. From the use of the words "platinoid finish" in describing belt buckles, cuff button sets, or other articles which do not contain any platinum.

10. From use of the word "diamond" in describing any stones which are not diamonds.

And it is further ordered, That respondents shall, within 60 days after service of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form of compliance with this order.

IN THE MATTER OF
CHERRY BLOSSOMS MANUFACTURING COMPANY

MODIFIED ORDER TO CEASE AND DESIST

Docket 1542. Order, Apr. 27, 1931

Order modifying order in 13 F. T. C. 124, relating to use of the words "Cherry Blossoms" or "Cherry" as a corporate or trade name, brand, label, etc., in connection with the sale of an artificially colored and flavored concentrate, and beverage made therefrom, containing neither product of the cherry or cherry blossom, though with the taste and appearance of such a beverage; as in said order set forth.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent, and testimony and evidence submitted; and the Commission having made its findings as to the facts and adopted its conclusion that respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and the Commission having heretofore, to wit, on the 16th day of December, 1929, entered its order upon the respondent requiring it to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that said order should be modified:

Now, therefore, the Federal Trade Commission, under and by virtue of the provisions of Section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", hereby

Orders, That the order to cease and desist heretofore made in this proceeding be, and the same is hereby, modified so that as modified said order shall read as follows, to wit:

It is now ordered, That respondent, Cherry Blossoms Manufacturing Co., its representatives, agents, servants, employees and successors, forthwith cease and desist, in interstate commerce, from:

(1) Using the words "Cherry Blossoms", or the word "Cherry", independently or in conjunction or combination with any other word or words, as its corporate name, or as a trade name for its product or the beverage made therefrom; or using the words "Cherry Blossoms" or the word "Cherry", independently or in conjunction or combination with any other word or words in advertising, or on labels of its product or the beverage made therefrom, except when

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limited to a statement in substance that the product or the beverage made therefrom resembles cherry in flavor or coloring, but contains no juice or coloring matter of cherry or of cherry blossoms.

(2) Furnishing or causing or authorizing to be furnished to others, labels, posters, placards, bottle caps or crowns, containers or advertisements bearing the words "Cherry Blossoms" or the word "Cherry", independently or in conjunction or combination with any other word or words, except when limited to a statement in substance that the product or the beverage made therefrom resembles cherry in flavor or coloring, or both, but contains no juice or coloring matter of cherry or of cherry blossoms.

(3) Representing, or providing others with the means of representing in any way that its product or the beverage made therefrom contains any of the juice, or extract, or coloring matter of cherry or of cherry blossoms.

It is further ordered, That the said respondent shall, within 60 days after the service upon it of a copy 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
COTY, INCORPORATED

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

Docket 1688. Complaint, Aug. 23, 1929—Decision, Apr. 27, 1931

Where a corporation engaged in importing perfumes, extracts, essences, powders and other cosmetics from France, and in packing and selling same to wholesale and retail dealers in various States; in pursuance of a policy adopted and directed to the maintenance and enforcement of prices suggested by it for resale of said products by customers,

- (a) Announced said policy publicly and furnished vendees with suggested prices for observance by wholesale and retail dealers and made it generally known to the trade through letters, telegrams, and interviews that it expected and required its dealers to maintain said prices;
- (b) Insisted upon such maintenance to wholesale and retail dealers brought to its attention as price cutters in their respective cities or territories and secured their agreements to maintain prices in the future; and
- (c) Refused to sell to price cutting wholesale and retail dealers failing to give assurances of price maintenance in the future and supplied names of those thus cut off to dealers maintaining its prices, and actual or potential sellers in territory served by aforesaid price cutters, and advised former of discontinuance of sales by it to latter by reason of their price cutting and failure to give assurances of future price maintenance;

With direct result of substantially lessening and suppressing competition between dealers in distribution and sale of its products, constraining them to sell same at prices fixed and established by it, preventing them from selling same at such lower prices as they might desire, and depriving their purchasers of advantage in price and otherwise, obtainable from natural and unobstructed flow of commerce in said products under conditions of free competition among such dealers, and of unduly hindering and obstructing competition in sale and distribution of said products in interstate commerce, and with tendency so to do:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Coudert Brothers, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Coty, Inc., a Delaware corporation engaged in the importation of perfumes, extracts, essences, powders and other cosmetics from France, and packaging and sale thereof to wholesale

and retail dealers in several States, and with principal office and place of business in New York City, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, "for more than three years last past, in the course and conduct of its aforesaid business has enforced, and still enforces, a merchandising system adopted by it of establishing and maintaining certain specified prices at which its said products shall be resold by dealers handling the same, and respondent enlists and secures the support and cooperation of said dealers and of respondent's officers, agents and employees in enforcing said system.

"In order to carry out said system, respondent during said time has employed and still employs the following means whereby respondent and those cooperating with it have undertaken to prevent and have prevented dealers handling respondent's said products from reselling same at prices less than aforesaid resale prices established by respondent":

(a) Adopting and publicly announcing a resale price maintenance policy, with suggested prices to be observed by its wholesale distributors and retail dealers;

(b) Making it generally known to the trade by letters, telegrams, interviews with respondent's agents and by other means that it expects and requires dealers handling its said products to maintain and enforce its said suggested prices;

(c) Seeking and securing assurances from dealers that they will not in the future sell its products at prices other than those approved by it;

(d) Refusing to sell dealers direct who will not give it their assurances to maintain its said resale prices, and furnishing their names, as price cutters, with the statement that they can no longer buy direct from it, to cooperating distributors who are selling or might sell in the territory in which such price cutters are located.

As a result of said acts and practices, as charged, respondent's said resale prices have been generally maintained, and the direct effect and result thereof have been "to substantially lessen and suppress competition between dealers in the distribution and sale of respondent's products; to constrain such dealers to sell said products at prices fixed and established by respondent and to prevent them from selling said products at such less prices as they may desire; and to deprive the purchasers from such dealers of the advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free competition among such dealers.

"Wherefore, said acts and practices of the respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Coty, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed, and thereafter this proceeding came on for consideration, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs, and having argued the case before the Commission, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the City of New York in the State of New York. It is now and at all times hereinafter mentioned has been engaged in the business of importing from France, and packaging perfumes, extracts, essences, powders, and other cosmetics which are then sold to wholesale and retail dealers located at points in various States of the United States.

PAR. 2. Respondent causes the said products when so sold to be transported from its place of business in the City and State of New York into and through other States of the United States to the vendees thereof at their respective points of location.

PAR. 3. In the course and conduct of its said business, respondent is in competition with other corporations, individuals and partnerships engaged in the importation and sale or manufacture and sale of perfumes, extracts, essences, powders and other cosmetics in commerce between and among various States of the United States.

PAR. 4. In 1925 in connection with the distribution and sale of its products, respondent adopted and enforced and still enforces a policy whereby its customers were and are required to resell its said products at certain suggested resale prices. Respondent enlisted and secured and enlists and secures the support and cooperation of its vendees and of respondent's officers, agents and employees in enforcing the said policy.

PAR. 5. Respondent has publicly announced its resale price maintenance policy and has furnished its vendees with suggested prices to be observed by wholesale distributors and retail dealers.

PAR. 6. Respondent has made it generally known to the trade by letters, telegrams and interviews with respondent's agents that it expects and requires dealers handling its said products, to maintain its suggested prices. When information has been received by the respondent indicating that vendors of Coty products in a certain city or territory are not maintaining the suggested prices, the respondent has sent its agents to such city or territory for the purpose of interviewing dealers in its products. In such instances respondent's agents have pointed out to the vendees respondent's resale price maintenance policy and have insisted that the said vendees maintain the respondent's suggested prices, and have secured agreements from the said wholesale dealers and the said retail dealers whereby the said wholesale dealers and said retail dealers have agreed to maintain respondent's suggested resale prices.

PAR. 7. Respondent, acting through its agents, has sought and secured assurances and agreements from wholesale dealers and from retail dealers engaged in selling respondent's products, that they will not in the future sell respondent's products at prices less than those suggested by respondent.

PAR. 8. Respondent has refused to sell its products to wholesale dealers and to retail dealers who have not maintained the suggested resale prices of respondent and who will not agree and give their assurances that they will in the future maintain the suggested resale prices of respondent. Respondent has furnished the names of such wholesale dealers and retail dealers whom it has refused further to supply with its products direct to those wholesale dealers and retail dealers who maintained respondent's suggested resale prices and who were selling, or might sell, in the territory where dealers who had been cut off by respondent were located, together with a statement that the dealers whose names were furnished could no longer buy respondent's products direct from the respondent because said dealers had failed to observe respondent's suggested resale price. Since September, 1928, respondent has not made a practice of notifying

its vendees when such price-cutting dealers were cut off for failure to observe respondent's suggested resale price.

PAR. 9. The direct effect and result of these acts and practices of respondent has been and now is to substantially lessen and suppress competition between dealers in the distribution and sale of respondent's products; to constrain such dealers to sell such products at prices fixed and established by respondent and to prevent them from selling said products at such lower prices as they may desire; and to deprive the purchasers through such dealers of the advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free competition among such dealers. Respondent's said practices tend to and do unduly hinder and obstruct competition in the sale and distribution of its products in the course of interstate commerce.

CONCLUSION

The methods of competition set forth in the foregoing findings are, under the circumstances herein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and briefs and oral argument by counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

It is now ordered, That the respondent, Coty, Inc., its officers, directors, agents, servants and employees, cease and desist, in connection with the sale or offering for sale of its products in interstate commerce, from directly or indirectly carrying into effect or attempting to carry into effect by agreements, contracts or cooperative methods, a system of suggested resale prices at which the articles manufactured by it shall be resold by its customers and distributors and more particularly by any or all of the following means:

1. Entering into or procuring from wholesale dealers or retail dealers handling respondent's products, contracts, agreements, or

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understandings that respondent's products or any of them are to be resold by such dealers at prices specified or fixed by respondent.

2. Procuring either directly or indirectly from wholesale dealers or retail dealers promises or assurances that the prices fixed by respondent for the resale of respondent's products will be observed by such dealers.

3. In any manner seeking and procuring the cooperation of wholesale dealers or retail dealers in the maintenance of resale prices suggested by respondent for its products.

It is further ordered, That respondent shall within 60 days from the date of the service upon it of the order herein file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF

MAURICE TALMAGE, INDIVIDUALLY AND DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF DEBESTT CHEMICAL COMPANY

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

Docket 1876. Complaint, Nov. 18, 1930—Decision, Apr. 27, 1931

Where a chemical entity, the disodium salt of dibromoxymERICURI-FLUORESCIN, made under patent process, known as "Mercurochrome", and sold, as required by the makers, under said name and the letters "H. W. D.", their initials, and in the form of a 2 per cent solution, had been on the market and been sold to and used by the public as a general antiseptic and first aid prophylactic, and had come to be recognized and identified by medical profession and public by its aforesaid trade name, letters, and striking natural deep cherry color; and thereafter an individual designated as "Mercurochrome H. W. D. 2 per cent solution" a preparation dealt in by him, and described his said product as "Mercurochrome" in circulars, post cards, letters, pamphlets, magazine, newspaper and other advertising, and as "H. W. & D. 2 per cent Solution Dibrom OxymERICURI FLUORESCIN, General Antiseptic in place of Iodine"; fact being preparation was a spurious product of inferior quality containing little if any genuine mercurochrome, and possessing little of any antiseptic qualities; with capacity and tendency to mislead, deceive, and confuse, and inevitable result of misleading and deceiving purchasing public into belief that said product was the genuine, widely known and generally used antiseptic, mercurochrome, and with effect of unfairly diverting trade of competitors dealing in the genuine solution, and with capacity and tendency so to do:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constitute unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Maurice Talmage, engaged as DeBestt Chemical Co., in the sale of a product represented to be a general antiseptic for use in place of iodine, and with principal office and place of business in Chicago, with appropriating trade name of product of competitor, and advertising falsely or misleadingly as to source of product, in violation of the provisions of section 5 of said act prohibiting the use of unfair methods of competition in interstate commerce in connection with the application of the words "Mer-

curochrome" and "Mercurochrome H. W. D. 2 per cent solution" to his preparation, not the genuine mercurochrome, the product of Hynson, Westcott & Dunning, made by them for some ten years last past, and so known and identified, with the capacity and tendency to mislead and deceive and inevitable effect of misleading and deceiving the purchasing public, in respect of the nature, origin and identity of the aforesaid product; to the prejudice of the public and respondent's competitors.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 18th day of November, A. D., 1930, issued its complaint against Maurice Talmage, individually and doing business under the trade name and style of DeBestt Chemical Co., respondent above mentioned, and on January 5, 1931, caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint, respondent was notified and required within 30 days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's Rules of Practice with respect to answer and failure to answer, said provisions being set forth in haec verba in said notice and providing in part as follows (Rule III, subdivision 3):

3. Failure of the respondent to appear or file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it during said 30-day period specified in said notice, or at any time, made or filed answer to said complaint. It has at no time requested that the time within which it may file answer be extended, nor has the Commission granted any such extension of time.

¹Allegations and findings are substantially identical, the case not having been contested.

Findings

Thereupon this proceeding came on for final hearing; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid Rules of Practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Maurice Talmage is an individual doing business as DeBestt Chemical Co., with his principal office and place of business in the city of Chicago, State of Illinois. Said respondent is now and for more than one year last past has been engaged in the sale and distribution in interstate commerce of a product represented and designated by him as "Mercurochrome H. W. D. 2 per cent Solution", and further represented and designated as a general antiseptic to be used in place of iodine, which aforesaid product respondent packs and sells in $\frac{1}{4}$ -ounce bottles, 2 dozen to the carton, and in $\frac{1}{2}$ -ounce bottles, 1 dozen to the carton, and said respondent has caused said product so designated, represented and described when sold, to be sent from his place of business in the State of Illinois to purchasers thereof, located in a State or States of the United States, other than the State of Illinois. In the course and conduct of his business, respondent is, and was at all times hereinafter referred to, in competition with other individuals, firms, partnerships and corporations likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. For some 10 years last past the chemical entity known as mercurochrome, the disodium salt of dibromoxymercuri-fluorescein, has been on the market and has been sold to and used by the public generally in the form of a 2 per cent aqueous solution (which solution possesses a deep cherry color) for use as a general antiseptic and first aid prophylactic. Both the medical profession and the public have come to recognize and to identify said antiseptic by its trade name, "Mercurochrome", and by the striking color of its solution, which color is not artificially produced. Mercurochrome is produced under a patented process by Hynson, Westcott & Dunning, a pharmaceutical laboratory engaged in the production of bacterial and biochemic therapeutic products, located in Baltimore, Md., and is sold under said trade name with the accompanying initials "H. W. D." to indicate its origin. The aforesaid manufacturers of mercurochrome require that said trade name and their initials appear on distributors' labels and that the strength of the solution shall be accurately 2 per cent.

PAR. 3. In the course and conduct of his business as described in paragraph 1, hereof, said respondent has caused advertising matter consisting of circulars, post cards, letters, pamphlets and magazine or newspaper or other advertising to be distributed in interstate commerce, in soliciting the sale of and selling his said product, which said advertising matter referred to, or otherwise represented, his product as follows:

Safe, Mercurochrome does not irritate, burn, or injure tissues as Iodine does. Chicago * * *.

Mercurochrome H. W. & D. 2 per cent solution Dibrom Oxymercuri Fluorescein. General Antiseptic in place of Iodine. DeBest Chemical Co.

Handy. Use handy applicator rod attached to stopper for applying solution. Illinois.

Special offer on Mercurochrome H. W. D. 3 per cent SOLUTION. We are in a position to offer Mercurochrome at the lowest price obtainable as we specialize in this item and our large output and big volume of business enables us to undersell";

when in truth and in fact the product sold and distributed as aforesaid by respondent in interstate commerce was not mercurochrome the disodium salt of dibrom-oxymercuri-fluorescein, an antiseptic in general use produced under a patented process by Hynson, Westcott & Dunning, of Baltimore, Md. (H. W. & D.), and was not the H. W. & D. 2 per cent solution, but was a spurious product of inferior quality containing little if any mercurochrome, the disodium salt of dibrom-oxymercuri-fluorescein, the well known general antiseptic widely sold to and used by the public in the form of a 2 per cent aqueous solution.

PAR. 4. The use by respondent of the word "Mercurochrome" and the words "H. W. & D. 2 per cent Solution Dibrom Oxymercuri Fluorescein, General Antiseptic in place of Iodine", either independently or in connection or in conjunction with any other word or words to describe the product of respondent in the manner heretofore set out, has the capacity and tendency to mislead and deceive and to confuse and inevitably results in misleading and deceiving the purchasing public into the belief that respondent's said product so designated and advertised is mercurochrome, a widely known and generally used antiseptic and/or that respondent's product is a 2

per cent aqueous solution produced from the disodium salt of dibrom-oxymercuri-fluorescein manufactured by Hynson, Westcott & Dunning (H. W. & D.), when in truth and in fact respondent's product is a spurious product of inferior quality containing little if any mercurochrome, the disodium salt of dibrom-oxymercuri-fluorescein, and possessing little if any antiseptic qualities.

PAR. 5. There are, among the competitors of respondent mentioned in paragraph 1 hereof, many individuals, partnerships, firms, and corporations who sell and distribute in competition with respondent, and in interstate commerce, mercurochrome, the disodium salt of dibrom-oxymercuri-fluorescein, an antiseptic in general use produced under a patented process by Hynson, Westcott & Dunning, of Baltimore, Md., and who sell and distribute the genuine H. W. & D. 2 per cent solution, and which competitors in nowise misrepresent the character of said products or solutions. Respondent's acts and practices herein above set forth have the capacity and tendency to and do unfairly divert trade of said competitor.

CONCLUSION

The aforesaid acts and practices of respondent in the sale and distribution of its so-called "Mercurochrome" as the "H. W. D. 2 per cent solution", under the circumstances and conditions set forth herein, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent, Maurice Talmage, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent Maurice Talmage, his agents, representatives, servants and employees, cease and desist in connection with the offering for sale and sale in interstate commerce of so-called antiseptics:

1. From representing that the said so-called antiseptics are "Mercurochrome" unless said products so designated, are made from the disodium salt of dibrom-oxymercuri-fluorescein.

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2. From representing that the said so-called antiseptics are "H. W. D. 2 per cent solution" unless they are a 2 per cent solution of the disodium salt of dibrom-oxymercuri-fluorescein, which salt has been produced in the pharmaceutical laboratories of Hynson, Westcott & Dunning, Baltimore, Md.

It is further ordered, That respondent Maurice Talmage shall within 30 days after the service upon him of a copy 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 hereinbefore set forth.

Syllabus

IN THE MATTER OF

JOSEPH GREENSPAN, INCORPORATED, TRADING AS
GRAND RAPIDS UPHOLSTERING COMPANY

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

Docket 1887. Complaint, Dec. 17, 1930—Decision, Apr. 27, 1931

Where the city of Grand Rapids, Mich., had long come to be a large and important furniture and manufacturing center in this country and to be generally so known, and the furniture industry and manufacturers of said city had long since come to enjoy a wide popularity, good will and demand throughout the country for their product; and thereafter a corporation engaged in purchase, and sale at retail, of furniture bought by it from manufacturers and wholesalers in New York City and vicinity, and doing no manufacturing other than that involved in upholstering frames of living room furniture bought by it as above set forth, nor agent of nor representing any Grand Rapids furniture manufacturer, nor authorized by any such manufacturer to sell his product at factory prices.

Displayed on business cards distributed to public the name and legend "Grand Rapids Upholstering Co., Makers of Upholstered Furniture", and on signs at its place of business such legends as "Grand Rapids Furniture"; "Furniture Mfr Selling Direct to The Public Retail at Wholesale Prices", "Furniture manufacturers selling direct to the public retail at wholesale prices"; "Furniture—See it made on the premises—Manufacturers selling direct to the public—Save the retailers' Profits", and featured its said trade name including words "Grand Rapids", in its advertisements in newspapers of general circulation together with such statements as "From factory to you"; "Our newly adopted policy demands selling direct to the public at our original dealers' Prices", "Buy now at the same price dealers pay", "When manufacturers start selling direct to the public you can expect big things", "Manufacturers? Yes. Buy now at wholesale prices";

With effect of deceiving and misleading public into believing it to be a manufacturer offering furniture made by it in Grand Rapids, of the quality and characteristics associated with furniture there made, and sold direct from manufacturer to public, with profits of middlemen thereby eliminated, and with capacity and tendency so to mislead and deceive, and unfairly to divert sales to it from wholesalers and retailers dealing in furniture made in aforesaid city, those dealing in furniture not there made and not so represented through trade names and otherwise, manufacturers in said city and elsewhere selling direct to the consuming public, and manufacturers located elsewhere who do not falsely represent themselves as Grand Rapids manufacturers, but represent facts truthfully as to place of manufacture, and dealers who do not in any way represent themselves as agents or representatives of manufacturers to whom latter sell their furniture at factory prices:

Held, That such practices under the circumstances set forth constituted unfair methods of competition.

Complaint

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Mr. Edward E. Reardon for the Commission.

Mr. Herman S. Fried, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act the Commission charged respondent, a New York corporation engaged in the purchase of furniture from manufacturers and wholesalers in the vicinity of New York City, and in the sale thereof as bought by him, complete, except for living room furniture, frames of which he purchased as above set forth and upholstered himself, at his place of business, in New York, with using misleading trade name, misrepresenting business status and connections, and advertising falsely or misleadingly in said respects, and as to source or origin of products dealt in, in violation of the provisions of section 5 of such act, prohibiting use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, and with no connection with furniture manufacturers of Grand Rapids, Mich., long favorably known as furniture manufacturing center, nor selling any of their products, displays, as alleged, such signs in his place of business as "Grand Rapids Furniture", "Furniture Mf'r Selling Direct to The Public Retail at Wholesale Prices", "Furniture—See it made on the premises—Manufacturers selling direct to the public—Save the retailers' profit", and in his advertisements in newspapers, prominently displaying his trade name, makes such statements as "From factory to you", "Our newly adopted policy demands selling direct to the public at our original dealers' prices", "When manufacturers start selling direct to the public you can expect big things".

Said acts, as alleged, have capacity and tendency to deceive and mislead, and effect of misleading and deceiving the public as to the manufacture, quality and characteristics of the furniture thus dealt in by respondents and the advantages in price to such public in purchase from respondent, and the further tendency to unfairly divert sales from competitors of respondent engaged as manufacturers and/or dealers in Grand Rapids or elsewhere, or in Grand Rapids furniture or otherwise, without misrepresenting the fact as to their said furniture; all to the prejudice of the public and respondent's competitors.¹

Upon the foregoing complaint, the Commission made the following

¹ Allegations and findings are substantially identical, the case not having been contested.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on the 17th day of December, 1930, issued its complaint against the respondent, Joseph Greenspan, Inc., and caused the same to be duly served upon the respondent, as required by law, on the 18th day of December, 1930, charging the respondent with the use of unfair methods of competition in interstate commerce in violation of said act.

More than thirty days having elapsed from the day of service of the complaint upon respondent and no request for an extension of time having been made and no extension of time to answer having been granted; and the respondent having failed to file an answer, and, under the Rules of Practice and Procedure of the Commission, failure to file an answer within the time provided by said rules being deemed an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint, of all which the respondent had due notice and knowledge:

Thereupon the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, incorporated and doing business under the laws of the State of New York, with its place of business in the city and State of New York and engaged in the business of selling household furniture at retail.

In the course of respondent's business it makes sales of furniture at retail to persons located outside the State of New York and causes said furniture in performance of said sales to be transported from the city and State of New York and delivered to such purchasers at their respective locations outside the State of New York. In the course and conduct of said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and shipping of furniture in commerce from New York City and State into other States.

PAR. 2. For three years last past respondent has conducted a retail business, buying furniture for resale, from furniture manufacturers and wholesale dealers in the city of New York and vicinity, except living room furniture, the frames for which respondent purchases mainly from manufacturers or wholesale dealers in the city of New

York and vicinity and upholsters at its place of business in New York City.

In the course of its business as aforesaid respondent has displayed at its place of business various signs carrying the following legends: "Grand Rapids Furniture"; "Furniture Mf'r Selling Direct to The Public Retail at Wholesale Prices." Respondent has displayed also in its show windows and near the entrance to its store signs which read: "Furniture manufacturers selling direct to the public—retail at wholesale prices"; "Furniture—See it made on the premises—Manufacturers selling direct to the public—Save the retailers' profits."

In the course of its business as aforesaid, respondent has caused to be published in newspapers which have a general circulation in the State of New York and neighboring States, advertisements displaying prominently its trade name, describing various articles of furniture and bearing the legends: "From factory to you"; "Our newly adopted policy demands selling direct to the public at our original dealer's prices"; "Buy now at the same price dealers pay"; "When manufacturers start selling direct to the public you can expect big things"; "Manufacturers? Yes. Buy now at wholesale prices." Respondent uses and distributes to the public also a business card on which appears "Grand Rapids Upholstering Co., Makers of Upholstered Furniture, Joseph Greenspan, 39 W. 14th St., New York."

PAR. 3. The respondent does not manufacture furniture at Grand Rapids or anywhere else, except so far as he upholsters a part of his stock, namely, living room chairs, etc., in New York City. Respondent is not an agent or representative of a manufacturer or manufacturerers of Grand Rapids; or authorized to sell by, or has sold for, any Grand Rapids manufacturer, furniture at factory or manufacturer's prices.

PAR. 4. The city of Grand Rapids, Mich., has been for many years and is now a large and important center of the manufacture of furniture in this country. This fact is generally known to the public throughout the United States and the furniture industry and furniture manufacturers of Grand Rapids have for many years enjoyed and now enjoy a wide popularity, good-will and demand throughout the country as representing and making furniture, including household furniture of a dependable quality and desirable characteristics.

PAR. 5. The acts of respondent as set out in paragraph 2 hereof are calculated and have the capacity and tendency to, and do, deceive and mislead the public into the belief that the respondent is a manufacturer of furniture and that the furniture it offers for sale is

made (1) in the city of Grand Rapids, Mich., and (2) by respondent, and is of the quality and desirable characteristics associated in the public mind with the furniture manufactured in that city; and that respondent sells said furniture direct from manufacturer to the public thereby eliminating the profits of middlemen; whereas, in truth and in fact respondent purchases said furniture which it offers for sale and sells, mainly from manufacturers and wholesalers located in New York City and vicinity; and little or none of said furniture is made in the city of Grand Rapids, Mich., and none of it is made by respondent, except as to upholstery as aforesaid.

PAR. 6. Respondent in the course of his business as above described is in competition in interstate commerce severally with the following manufacturers and dealers in furniture; wholesale and retail dealers in furniture manufactured in Grand Rapids, Mich.; wholesale and retail dealers in furniture not manufactured in said city of Grand Rapids who do not through trade names or otherwise represent that such furniture is manufactured in said city or is in any wise a product of the furniture industry thereof; manufacturers of furniture at Grand Rapids and elsewhere who sell the furniture which they manufacture direct to the consuming public, and manufacturers of furniture at other places than Grand Rapids, who do not represent that they manufacture at Grand Rapids but truthfully represent the facts as to the place of manufacture; wholesale and retail dealers who do not in any manner represent that they are sales agents or representatives of manufacturers, at Grand Rapids or elsewhere, through whom such manufacturers sell the furniture made by them, at factory prices. The acts of respondent as aforesaid tend unfairly to divert sales from the various classes of competitors above described.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on the 17th day of December, 1930, issued its complaint against the

respondent, Joseph Greenspan, Inc., and caused the same to be duly served upon said respondent on the 18th day of December, 1930, as required by law, in which complaint it is charged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The respondent not having filed an answer to the complaint and failure to file an answer within the time provided by the Rules of Practice and Procedure of the Commission being deemed an admission of the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint, of all which the respondent had due notice and knowledge, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondent, Joseph Greenspan, Inc., its officers agents and employees in connection with the advertising, offering for sale or sale of furniture in interstate commerce do cease and desist from—

1. Using the terms "Factory" or "Manufacturers" on signs or in other printed matter to designate or to describe any building or place of business in or from which such furniture is sold that has only been upholstered by respondent, and unless and until the respondent actually owns and operates or absolutely controls a factory or manufacturing plant wherein furniture sold or offered for sale by the respondent is made.

2. Using the phrases "Manufacturers selling direct to the public—Save the retailers' profit," or words or phrases of like meaning, unless and until the respondent actually owns and operates or absolutely controls a factory or manufacturing plant wherein furniture sold or offered for sale by the respondent is made.

3. Using the words "Grand Rapids" as a trade name or in advertising, or in any manner, to designate or to describe furniture sold by respondent unless and until the furniture so described and sold is, in fact, manufactured at Grand Rapids, Mich.

It is further ordered, That the respondent, Joseph Greenspan, Inc., shall, within 30 days after the service upon it of this order, file with the Federal Trade Commission, a report in writing setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

Complaint

IN THE MATTER OF
NOMA ELECTRIC CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1894. Complaint, Jan. 14, 1931—Order, Apr. 27, 1931*

Consent order requiring respondent to desist selling or offering Christmas tree lighting outfits at less than cost, with intent and effect of hindering, suppressing and stifling competition in such outfits and of injuring and destroying the business of its competitors, as in said order set forth.

Mr. G. Ed. Rowland for the Commission.

Mr. Marvin Farrington, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Noma Electric Corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business in the City of New York in said State. The officers of respondent are Joseph Block, president; Henri Sadaca, vice president; Joseph Brittle, secretary; and Henry Hyman, treasurer. It is and has been for more than one year last past engaged in the business of manufacturing and selling decorative electric goods, Christmas tree lighting outfits, and other products of a similar nature. It causes said products, when so sold, to be transported from its said place of business in the said State of New York into and through other States of the United States to the purchasers thereof located in the various States of the United States, other than the State of New York. In the course and conduct of its said business, respondent is in competition with other persons, partnerships and corporations engaged in the sale and distribution of similar articles of merchandise in commerce between and among various States of the United States.

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PAR. 2. Christmas tree lighting outfits are of two kinds; those which have an extension device whereby other strings of lights can be added to the original string, and those which can not be added to. The former are manufactured under what is known as the Haft-Wood patent, granted in 1924, to persons other than respondent, and under which a number of companies were licensed to manufacture and sell extension tree lighting outfits by the owner or owners of the patent. In 1925, the majority of the licensees under the patent caused the respondent corporation to be organized, and became stockholders therein. Respondent corporation took a general license under the said Haft-Wood patent, and caused to be secured releases of the licenses granted the several companies which organized and were stockholders in respondent, and caused sublicenses to be granted to them. Later, Decorative Patents Corporation, all of the stock of which is owned by respondent, acquired the Haft-Wood patent.

At the time of the formation of respondent corporation the companies which organized it were in active competition with each other in manufacturing and selling extension and nonextension tree lighting outfits. Upon organization of respondent these companies, with the exception of one, immediately ceased manufacturing tree lighting outfits, and limited their efforts to the sale and distribution of tree lighting outfits, both extension and nonextension, manufactured by respondent. One company instead of transferring its manufacturing business to respondent, became the largest stockholder in said respondent, and accepted a license under the Haft-Wood patent, by the terms of which it was allowed to manufacture 20 per cent of the extension lighting outfits manufactured by respondent, and also agreed not to manufacture any nonextension outfits. At the present time all competition in the manufacture and sale of nonextension tree lighting outfits has been eliminated between respondent and the several companies holding stock in it.

As a result of the foregoing, respondent acquired and has occupied, during the times herein mentioned, a dominant position in the business of manufacturing and selling extension and nonextension tree lighting outfits.

PAR. 3. There are at the present time a number of companies engaged in the manufacture and sale in interstate commerce of non-extension Christmas tree lighting outfits, which companies are in active competition with respondent in the manufacture and sale of said type of Christmas tree lighting outfits. In the course and conduct of its said business, and with the intent, purpose and effect of hindering, suppressing and stifling competition in the manufac-

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ture and sale of decorative Christmas tree lighting outfits in interstate commerce, and of injuring and destroying the business of the said competitors and thus restraining trade and acquiring a monopoly in said business, respondent in 1928 offered for sale and sold an 8 light nonextension Christmas tree lighting outfit, equipped with Mazda lamps, at a price of 65 cents, and an 8 light nonextension Christmas tree lighting outfit, equipped with Japanese carbon lamps, at a price of 45 cents.

Said prices of 45 cents for the nonextension tree lighting outfit equipped with Japanese carbon lamps, and 65 cents for the nonextension tree lighting outfit equipped with Mazda lamps, were less than it cost respondent to manufacture said respective tree lighting outfits.

PAR. 4. The effect and result of the said practice of respondent in selling said nonextension tree lighting outfits for less than it cost respondent to manufacture the same, under the circumstances hereinabove set forth, have been, and now are, to unduly hinder, restrain and suppress competition in the manufacture and sale in interstate commerce of said nonextension Christmas tree lighting outfits, and tend to create in respondent a monopoly of said business.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This matter coming on for consideration before the Commission on the certain written pleading filed herein by respondent, Noma Electric Corporation, wherein respondent waived hearing and refrained from contesting the complaint herein; and the Commission having accepted and considered such pleading, and being fully advised in the premises:

It is ordered, That respondent, Noma Electric Corporation, its officers, agents, representatives and employees, in connection with the manufacture and sale of decorative electric goods, Christmas tree lighting outfits, and other products of a similar nature, cease and desist from selling, or offering for sale, in interstate commerce, extension or nonextension Christmas tree lighting outfits equipped with Mazda lamps, carbon lamps, or any kind of lamps, at any price which is less than the cost to said respondent of manufacturing said Christmas tree lighting outfits, with the intent, purpose and effect

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of hindering, suppressing and stifling competition in the manufacture and sale of decorative Christmas tree lighting outfits, and of injuring and destroying the business of its competitors.

It is further ordered, That respondent, within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying, and has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
BEN-BURK, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1775. Complaint, Mar. 19, 1930—Decision, May 4, 1931*

Where a corporation engaged in sale at wholesale of domestic malt syrup containing only a small proportion of higher priced, foreign grown hops, long regarded as superior to the domestic, and particularly so in the case of those from Germany and the Saazer district of Czecho-Slovakia, sold aforesaid products in containers displaying such labels as "German Maid", "Dutch Maid", "Kron-Prinz" or "Meierhof", together with depictions of German, Dutch or other foreign scenes, with lids bearing a brass diamond soldered thereon, with the stamp of a German iron cross, and the words "Gott Mit Uns 1870", and "Imported hop flavor", and in cartons bearing the words "Special light 3 pounds Imp."; with capacity and tendency to mislead and deceive purchasers and prospective purchasers into believing aforesaid products to have been imported from Germany or to have been made from or flavored with foreign ingredients, and with effect of furnishing dealers and jobbers with the means of misleading and deceiving their customers into purchasing aforesaid products in reliance on said erroneous belief, and capacity and tendency to divert trade to it from competitors offering imported malt syrups or those made out of foreign or imported ingredients, or competitors selling such syrups consisting entirely of domestic materials:

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

Mr. James M. Brinson for the Commission.

Mr. Ellis Benjamin, of Boston, Mass., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation, engaged in the sale at wholesale of malt products for making home brew beverages, including malt syrups purchased from Jacob Ruppert, of New York, and with principal office in Boston, with misbranding or mislabeling as to source or origin and composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in connection with the sale of aforesaid malt syrups, sold largely to people of German or other foreign extraction throughout the country, and containing only a small proportion of imported hops, to wit, approximately one-eighth or one-ninth, sold and distributed said syrups in cans, upon the lid of which it had caused to be soldered a brass diamond bearing the stamp of a German Iron Cross on which are the words "Gott Mit Uns, 1870", and over it the words "Imported Hop Flavor", and under labels containing the brand names "German Maid", "Dutch Maid", "Kron Prinz", and "Meierhof", and depictions of scenes in Germany, Holland or other foreign countries, and symbols of such countries, and in cartons bearing the words "Special Light, three-pound, Imported".

Said labels and descriptive matter, as alleged "have the capacity and tendency to cause purchasers of such products to believe that the hops contained in respondent's products above described are wholly or principally of foreign origin and imported, and to induce purchasers of respondent's products in that belief,"¹ and said practices of respondents, as above set forth, are, as charged, all to the prejudice of the public and of respondent's competitors, who truthfully describe their products, and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Ben-Burk, Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer, hearings were had and evidence introduced on behalf of the Commission and the respondent before John W. Bennett, an examiner of the Federal Trade Commission, theretofore duly appointed. Thereupon this proceeding came on for final hearing on briefs and oral arguments, and the Commission, being fully advised in the premises, files this its report, stating its findings as to the facts and its conclusion drawn therefrom:

¹ As to this complaint, after setting forth that hops are an essential ingredient for flavoring such products as those herein concerned, alleges that the foreign grown hops, such as German or Dutch hops, have long been regarded as superior in quality for the purpose of making beer and command in this country a much higher price than hops grown here.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Ben-Burk, Inc., has been, and is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the city of Boston and State aforesaid. Its business has consisted and consists in selling at wholesale, malt syrup products which it purchases from Jacob Ruppert, a New York corporation, which, on the order of respondent, distributes said syrups to retailers and jobbers in the various States of the United States other than the States of Massachusetts or New York. In the course and conduct of its said business respondent has been for two years last past, and now is, in competition in interstate commerce with various other individuals, partnerships and corporations engaged in the sale of malt syrup products in such commerce.

PAR. 2. Respondent in the course and conduct of its business as described in paragraph 1 hereof has offered for sale and sold, and caused to be distributed as aforesaid in commerce among and between the various States of the United States, certain malt syrups in cans, upon the lids of which it has caused to be soldered a brass diamond bearing the stamp of a German iron cross on which are the words "Gott Mit Uns 1870", and over it the words "Imported Hop Flavor". These products are sold by respondent under the labels "German Maid", "Dutch Maid", "Kron-Prinz" and "Meierhof". The labels "German Maid", "Dutch Maid" and "Kron Prinz" contain pictures or scenes of Germany or Holland, or other foreign countries and other symbols of such foreign countries. Respondent has also sold said products in cartons on which were stamped the words "Special light 3 pounds Imp."

PAR. 3. It has been and is the practice in the malt syrups trade to sell and distribute both malt syrups flavored with hops and malt syrups without hop flavoring. Foreign grown hops, particularly hops grown in Germany and in the Saazer district of Czecho-Slovakia formerly known as Bohemia, have long been regarded as superior in quality for the purpose of making beverages, and command in this country a much higher price than hops grown in the United States.

In truth and in fact the products of respondent so described and sold have not been and are not manufactured in Germany, Czecho-Slovakia or any other foreign country, and no more than ten per cent of the hops, or other material used in their manufacture, have been, or were until January 1, 1930, imported from Germany, Czecho-Slovakia, or any other foreign country, and such products have been and were manufactured in the United States chiefly of domestic material grown or produced in the United States.

On or about January 1, 1930, respondent discontinued the practice of offering for sale or selling in interstate commerce any malt syrup bearing either on the lids of cans or containers, or labels attached thereto, the word "Imported", unless such product had been or was flavored 100 per cent with foreign or imported hops. On or about said time respondent also discontinued use on the lids or tops of the containers in which its product had been offered for sale as aforesaid, the stamp with the iron cross and the words "Gott Mit Uns", and approximately at said time, or shortly prior thereto, respondent caused to appear on its various labels the words "Made in America". Respondent also discontinued on or about January 1, 1930, its practice of stenciling on the cartons the words "Special light 3 pounds Imported". It has been, and still is the practice of respondent to use on cans or containers of products which have no imported ingredients and consist entirely of ingredients produced in the United States, the same labels described in paragraph 2 hereof carrying foreign scenes and features.

PAR. 4. The acts and practices of respondent in offering for sale and selling its product in containers bearing on the lids thereof the German iron cross with the words "Gott Mit Uns" and the word "Imported" and the words "Special light 3 pounds Imported" stenciled on its cartons, have had the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the products of respondent had been, or were imported into the United States from Germany, and the use of the said labels since January 1, 1930, containing the words "German Maid", "Dutch Maid", "Kron Prinz" and "Meierhof" with their pictures of individuals in foreign dress and foreign scenes on cans or containers of products containing no foreign or imported ingredients, have had and have, and each of said practices has had, and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the product of respondent has been imported into the United States, or is manufactured from, or flavored with foreign ingredients. Such acts and practices have also furnished, and furnish dealers and jobbers with the means to mislead and deceive their customers into the purchase of such products in reliance on the erroneous belief that they have been, or were imported, or manufactured from, or out of, or flavored with, foreign ingredients, and such practices have had and have, and each of them has had, and has the capacity and tendency to divert trade to respondents from competitors offering for sale or selling in interstate commerce, imported malt syrups, or malt syrups manufactured from and out of foreign or imported ingredients, or selling malt syrups consisting entirely of domestic ingredients.

CONCLUSION

The acts and practices described in the above and foregoing findings as to the facts have been and are all to the prejudice of the public and respondent's competitors, and are unfair methods of competition within the meaning of an act approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, testimony and evidence received, briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion drawn therefrom that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

It is now ordered, That the respondent, Ben-Burk, Inc., its officers, agents and employees, do cease and desist from—

(1) Offering for sale, or selling in interstate commerce, any malt syrup or malt syrup product, either by or in advertisements containing, or in cans or containers bearing, a representation of the German iron cross, with the words "Gott mit uns", or "Imported hop flavor", or the words "One hundred per cent hop flavored" or the word "Imported" or the abbreviation "Imp.", or any other word or words signifying, suggesting, or implying either an imported product, or a product flavored with imported hops, unless such product is imported, or is flavored with 100 per cent of imported hops.

(2) Using in advertisements or on the cans or containers of any product made in the United States entirely of domestic materials offered for sale and sold in interstate commerce, the words "German Maid", "Dutch Maid", "Kron Prinz", or "Meierhof" as a trademark, or trade name for or to describe or designate such product, or any picture, representation, or illustration of Germany, or other foreign scenes, or of individuals in foreign dress or costume, unless there conspicuously appear in immediate conjunction with such words "German Maid", "Dutch Maid", "Kron Prinz" and "Meierhof", or with such picture, representation, or illustration, the words "Made in the United States of Domestic Ingredients".

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

Complaint

15 F. T. C.

IN THE MATTER OF
CANADA'S PRIDE PRODUCTS CO., INC., FORMERLY
INTERNATIONAL PRODUCTS CO.

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

Docket 1845. Complaint, June 11, 1930—Decision, May 5, 1931

Where a corporation engaged in sale of domestic malt syrups containing no Canadian ingredients, adopted the corporate name "Canada's Pride Products Co., Inc." and advertised and labeled said products as "Canada's Pride Malt Hop, Malt Syrup Hop flavored," together with map of Dominion of Canada, and statement guaranteeing use of only freshest and purest ingredients "in the manufacture of Canada's Malt Hop," and words or legend "In Canada, International Products Sales Company, Ltd., Truro, Nova Scotia; International Products Company, sole distributors, New York City, N. Y.;" with capacity and tendency to mislead and deceive purchasers and prospective purchasers, and with effect of furnishing dealers with means of misleading and deceiving customers into belief that said products had been made in Canada and imported into the United States or made out of material or ingredients so produced and imported, and thus induce purchase of such products in reliance on such erroneous belief, and with capacity and tendency to divert trade to it from competitors truthfully advertising and describing their products:

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

Mr. James M. Brinson for the Commission.

Mr. John B. Hosty, of Hosty & Irmiger, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, "Canada's Pride Products Co., Inc.¹, a Rhode Island corporation engaged in the sale of malt syrups, chiefly to wholesale grocers and chain stores through traveling salesmen, and with office and principal place of business in New York City, with advertising falsely or misleadingly as to source or origin and composition of products, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

¹ International Products Co. until on or about April 1, 1930, at which time the corporate name was duly changed.

Respondent, as charged, engaged as above set forth, describes, designates, advertises and labels a product dealt in by it as above set forth, manufactured in the United States and containing no ingredients originating or produced in Canada or imported into the United States therefrom, "Canada's Pride Malthop Malt Syrup Hop Flavored" together with a map or outline suggesting the Dominion of Canada and with the legend on the labels guaranteeing use of only the freshest and purest ingredients "in the manufacture of Canada's Pride Malthop. In Canada, International Products Sales Company, Ltd., Truro, Nova Scotia; International Products Company sole distributors, New York City, N. Y."

Practices of respondent, as alleged, in offering for sale and selling its product designated or described as "Canada's Pride Malthop, Malt Syrup Hop Flavored", has had and has, and its adoption and use of the words Canada's Pride Products Co., Inc., as its corporate name, has had and has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers, and has furnished dealers with the means to mislead their customers, into the belief that the products so described or designated were and are composed of ingredients produced in and imported from the Dominion of Canada, and to induce its purchase in reliance on such erroneous belief, and said acts and practices of said respondent, as charged, are all to the prejudice of the public and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon Canada's Pride Products Company, Inc., formerly International Products Company, a corporation hereinafter called the respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance, and filed its answer, a stipulation as to the facts in lieu of testimony and evidence was entered into by and between counsel for the Commission and respondent, subject to approval of the Commission, in course of a hearing duly held before the examiner theretofore duly appointed for such purpose; thereafter the proceeding regularly came on for final hearing before the Commission on such complaint, answer, stipulation, brief in support of the complaint and arguments of counsel

for the Commission and the respondent, and the Commission having duly considered the same and having approved the stipulation, now makes this its report in writing, and states its findings as to the facts and conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Canada's Pride Products Company, Inc., is now, and prior to issuance of the complaint herein was, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business in the City of New York and State of New York. It is now, and prior to issuance of complaint herein, was engaged in the business of offering for sale and selling, and when sold, transporting or causing to be transported to purchasers thereof, malt syrups, in commerce among and between the various States of the United States, chiefly to wholesale grocers and so-called chain stores situated in the various States of the United States. It travels salesmen, who solicit orders from customers in the various States of the United States. It was, prior to April, 1930, engaged in business under, by, and with the corporate name of, International Products Company, and on or about April 1, 1930, such corporate name was duly changed to Canada's Pride Products Company, Inc.

In the course and conduct of such business respondent is now, has been, and was at all times hereinafter mentioned, in competition with individuals, partnerships, and corporations similarly engaged in the sale and distribution of malt syrups in interstate commerce.

PAR. 2. In the course and conduct of its said business respondent has offered for sale and sold, and offers for sale and sells, a product which it has described and designated, and now describes and designates, in advertisements distributed among purchasers and prospective purchasers in the various States of the United States, and on labels as:

Canada's Pride

Malthop

MALT SYRUP HOP FLAVORED

There appears beneath such words in advertisements and on labels of respondent, as a base therefor, or background thereto, an apparent reproduction, representation, or illustration of the map of Canada, or an outline obviously purporting to be an indication or suggestion of the Dominion of Canada.

The labels on containers in which respondent has offered and offers for sale and sells its product also carry the following:

We guarantee that only the freshest and purest ingredients have been used in the manufacture of Canada's Pride Malthop. In Canada, International Products Sales Company, Ltd., Truro, Novo Scotia; International Products Company, sole distributors, New York City, N. Y.

In truth and in fact the product so described and designated as "Canada's Pride Malthop" offered for sale and sold in commerce by respondent either under the name Canada's Pride Products Company, Inc., or International Products Company, is manufactured in the United States for respondent by the Jacob Ruppert Company, formerly known as Jacob Ruppert Brewery Company, located in the City of New York and State of New York, and none of its ingredients has originated or been produced in Canada, or imported into the United States therefrom.

PAR. 3. The adoption and use by respondent of the words "Canada's Pride Products Company Inc.," for its corporate name as described in paragraph 1 hereof, has had, and has, and the acts and practices of respondent described in paragraph 2 hereof, have had, and have, and each of them has had, and has the capacity and tendency to mislead and deceive purchasers and prospective purchasers, and each of said acts and practices, including the use of the words "Canada's Pride Products Company, Inc.," as a corporate name has furnished and furnishes dealers with the means to mislead and deceive their customers, into the belief that the products offered for sale and sold by respondent, particularly those described or designated as "Canada's Pride Malthop", "Malt Syrup Hop Flavored", were, and are manufactured in Canada and imported into the United States therefrom, or manufactured from or out of material or ingredients produced in the Dominion of Canada and imported into the United States, and to induce purchase of such products in reliance on such erroneous belief; and said acts and practices have had and have the capacity and tendency to divert trade to respondent from competitors truthfully advertising and describing their products.

CONCLUSION

The above and forging acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent and a stipulation as to the facts, by and between counsel for the Commission and for respondent, in lieu of testimony and evidence, briefs and arguments of counsel and the Commission having made its findings as to the facts and its conclusion drawn therefrom, that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

It is now ordered, That the respondent Canada's Pride Products Co., Inc., its officers, agents and employees do cease and desist from:

(1) Using the corporate name, Canada's Pride Products Co., Inc., in connection with advertising, offering for sale, or selling in interstate commerce any malt syrup or malt syrup product which has not been manufactured in Canada and imported into the United States therefrom, or which has not been manufactured from or out of ingredients or originating or produced in Canada, or any corporate name including the word Canada or Canada's, or any map, outline or other representation or illustration of Canada, unless accompanied by apt and adequate words in immediate conjunction therewith and equally conspicuous, clearly showing that such products have not been manufactured in Canada or from or out of ingredients originating or produced in Canada.

(2) Using the words, Canada's Pride Malthop, or any other word or words including the word Canada or Canada's as a trade mark for or to describe or designate, in connection with advertising, offering for sale or selling in interstate commerce any malt syrup or malt syrup product which has not been manufactured in Canada and imported into the United States therefrom, or which has not been manufactured from or out of ingredients originating or produced in Canada unless accompanied by apt and adequate words in immediate conjunction therewith and equally conspicuous, clearly showing that such products have not been manufactured in Canada or from or out of ingredients originating or produced in Canada.

It is further ordered, That respondent within 60 days from and after service of this order file with the Commission a report in writing setting forth in detail the method and form in which it has complied with the order.

Modified order

IN THE MATTER OF

NATHANIEL L. BLAUSTON, AN INDIVIDUAL DOING
BUSINESS UNDER THE NAMES AND STYLES OF
MARIE ANTOINETTE PERLE COMPANY AND BRISTOL
GIFT SHOP

MODIFIED ORDER TO CEASE AND DESIST

Docket 1479. Order, May 11, 1931

Order modifying order in 12 F. T. C. 11 et seq., so as to remove from the prohibitions thereof that relating to the use of the words "Nickel Silver" or either of them, to describe articles of merchandise not composed in whole or in part of the metals known as silver and nickel.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission and the answer of the respondent, filed pursuant to Rule III of the Rules of Practice of the Commission, in which answer it is set forth that respondent refrains from contesting the proceeding instituted by the Commission, and the Commission having made its findings as to the facts, with its conclusion that the respondent has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and the Commission, on November 15, 1930, having served due notice upon the respondent that it proposed to modify the order to cease and desist theretofore issued herein on, to wit, the 6th day of February, 1928, and the respondent having failed to appear in response to said notice, and having failed to make any objection to the entry of the order as proposed to be modified,

It is ordered, That respondent, Nathaniel L. Blauston, his agents, employees and successors, cease and desist from:

(a) Using the words "Gold Plate" or "Gold Plated", or either of them, to advertise or describe watch cases which have a plating of gold less than three one-thousandths of an inch in thickness on the outside, and one one-thousandth of an inch in thickness on the inside; and using the words "life guaranteed" to indicate the length of time such watch cases will last or wear.

(b) Using the words "Silver Finished" or "Silvered", or either of them, to advertise or describe watch or clock dials which contain no silver metal; or the words "Gold Finish" to advertise or describe

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pen and pencil sets which contain no gold metal; or the words "Platinoid Finish", or "Platinum Effect", or either of them, to advertise or describe articles or merchandise which contain no platinum; or the words "Platinum Top", or "Gold Top", respectively, to advertise or describe brooches or bar pins or similar articles of jewelry which have only a thin plating of platinum or gold, as the case may be.

(c) Using the words "Amber", "Crystal", "Jade", "Jet", "Amethyst" or "Garnet", or either of them, respectively, to advertise or describe necklaces which are not composed of genuine amber, crystal, jade, jet, amethyst or garnet, as the case may be.

(d) Using the words "Gold Filled" or "Gold Shell", or either of them, to advertise or describe finger rings and charms, unless such articles contain a layer or shell of gold of substantial thickness on the outside, and unless said words are preceded by the designation of the alloy of gold used in the shell, which is preceded by a fraction designating the correct proportion of the weight of the layer or shell of gold to the weight of the entire ring or charm.

(e) Using the word "Ivory" as a noun to advertise or describe articles of merchandise which are not composed in any part of genuine ivory, but are composed of a material made to simulate ivory in appearance and finish.

(f) Using the word "Ivoroid" or "Rubberoid", or "Amberite", or either of them, respectively to advertise or describe articles of merchandise which do not contain in any part genuine ivory, rubber or amber, respectively; and from using the word "Leather", either alone or in combination with any other word or words, letter or letters, to advertise or describe articles of merchandise which are not made in part of the prepared skins of animals.

(g) Using in catalogues or other advertising matter pictorial representations of any article of merchandise which is not an illustration of the particular article of merchandise actually offered for sale.

(h) Making any other untrue advertisement or description of any article offered for sale by him.

It is further ordered, That the respondent Nathaniel L. Blauston, shall, within 60 days after the service upon him of a copy 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 hereinbefore set forth.

Syllabus

IN THE MATTER OF

C. J. OZMENT, INDIVIDUALLY AND DOING BUSINESS
UNDER THE TRADE NAME AND STYLE, OZMENT'S IN-
STRUCTION BUREAU

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

Docket 1872. Complaint, Nov. 3, 1930—Decision, May 11, 1931

- Where an individual engaged in the sale of correspondence courses of instructions for civil-service examinations, purporting to qualify applicants for success therein; in describing its courses in advertisements in newspapers, magazines, and elsewhere, and in printed circulars, letters, and otherwise—
- (a) Made such statements as "Wanted Immediately—18-55, Men—Women, qualified for permanent Government positions, \$105-\$250 a month," "Wonderful Jobs with U. S. Government for Men—Women, 18-55. \$125-\$250 a month," etc., "Government Positions \$35 to \$75 weekly. Age 18-55," together with list of places including such positions as railway mail clerk, forest ranger, R. F. D. carrier, etc., facts being salaries for some of positions were not as high as \$250 a month to commence with, and some were not available to persons over 50 years of age, or had maximum age limits considerably below 55;
 - (b) Represented that a large number of examinations would be held soon, that "if you can get started right away, we can have you ready for one or more examinations within three or four weeks from now," that "civil-service examinations are held in almost all towns and cities of 3,000 population and upward," and that "it is not necessary for anyone to go far in order to enter an examination," etc., and that "U. S. Government stenographers and typist examinations are announced to be held in almost every large city throughout the United States about every 60 days," facts being that no examinations were to be held soon for some of the positions, while for others only a small number were to be held or likely to be held soon, examinations are held in comparatively few towns and cities of 3,000 population and upward, and examinations for Government stenographers and typists were held or announced to be held only once or twice yearly in many of the large cities instead of each sixty days in almost all such cities;
 - (c) Represented that "there are good Government positions in almost every town, and in the larger cities there are thousands and thousands of places," and that "in the smaller towns and cities there are places such as postmaster, assistant postmaster, post-office clerk, city carrier, village carrier, rural carrier, etc., while in the larger cities there are many kinds," fact being that the number of Government positions available in the larger cities is very much less than represented;
 - (d) Stated in connection with the description of duties and compensation of forest rangers that examinations were usually held in a large number of States specified, but that it was not necessary to be a resident thereof

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though such residents were given preference where practicable, facts being very few appointments were made to said position, and appointment in practically all instances is limited to residents of State in which forest is situated with very little, if any, opportunity for appointment for those passing examinations who do not live in States with natural forests;

- (e) Made such statements in describing compensation, duties and privileges of railway mail clerks as "the position * * * with all the splendid advantages of travel, interesting stimulating change of scenery, new friends, new opportunities," etc., " * * * you work four or six days then you are off duty four or six days. Free to spend almost all your time as you please, ball games, fishing," etc., and "on FULL PAY STRAIGHT THROUGH," some arranging "to engage in some other employment during the days off the road" and making "almost enough that way to meet personal expenses," and inquiring whether "\$225 per month for fifteen days, (\$15 for each day you actually work), with allowance for meals and hotel bills, a railway pass or commission and an annual vacation with pay appeal to You," facts being many clerks must serve several years in a terminal station before being allowed to travel, with no allowances during such a period for meals or hotel bills, allowances for hotel expenses are limited to actual expenses and such expenses, not exceeding \$3 a day, do not begin until clerk has been on road ten hours, at least 50 per cent of employees receive no such allowance since employed on short runs or at terminals or transfers, and employees are required to average 8 hours work a day for 306 days a year, and at least one-third of entire force is employed at terminals and transfers, or in offices, for 8 hours a day, with no time off;
- (f) Set forth so-called "MONEY BACK AGREEMENT," in which he agreed to refund full tuition paid, should applicant not secure Government position after completing course and taking the three Government examinations for which it prepared him, with privilege, however, if desired, of concentrating on one examination only, fact being that in absence of any specified time within which tuition money was to be refunded, years might elapse before refunds could or would be made,

With capacity and tendency to mislead and deceive public and prospective subscribers into erroneous belief that said statements and representations were true and induce such persons to apply for and subscribe to such courses in reliance upon and by reason of their belief in the truth and accuracy thereof, and thereby divert trade to him from competitors and with effect of so doing:

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

Mr. Richard P. Whiteley for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, a resident of St. Louis, engaged in the sale of correspondence courses for preparing subscribers for success in

competitive civil-service examinations for positions in the Government service, with advertising falsely and misleadingly as to prospects and probable results of service offered, and money-back guarantee, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in commerce.

Respondent, as charged, engaged as above set forth, makes statements in his advertisements in newspapers, magazines, and elsewhere in printed circulars, in letters, and otherwise which are false or misleading as to age limits, the places in which examinations are to be held, the frequency and pendency of examinations, the demand for employees in various classes and places, the possibilities of employment and the perquisites and other advantages of certain places and the compensation to be paid, and sets forth a misleading money-back agreement, in which provision for refund is made only in case subscribers have taken "at least three Government examinations and have failed to secure a position in the Government service," which in most instances prevents said applicants or subscribers from securing said refund.¹

Respondent, further as charged, "enrolls and/or retains as students after enrollment, certain applicants for or subscribers to his courses of instruction as eligible for or fitted, physically or mentally or otherwise, for appointment to certain positions in the Government service, and notifies said applicants or subscribers that they are eligible for said positions when he is without knowledge of their mental or physical fitness and when, in truth and in fact, said applicants or subscribers are not eligible for or fitted, physically or mentally or otherwise, for appointment to said positions."

Said acts and things, as charged, are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent C. J. Ozment, doing business under the trade name and style, Ozment's Instruction Bureau, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer herein and having entered into a

¹ The various advertisements charged in the complaint as being misleading, are set forth in the findings, as is the "money back agreement."

stipulation as to the facts in which it was agreed that the said facts might be taken in lieu of testimony and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the filing of briefs or the presentation of argument, thereupon this proceeding came on for final hearing and the Commission having considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent C. J. Ozment is a resident of the city of St. Louis, State of Missouri, with his office and principal place of business in said city and State, where he is and has been for more than two years last past doing business under the trade name and style, Ozment's Instruction Bureau. The said business of respondent consists in furnishing courses of instruction by correspondence sent by him through the United States mail to applicants for or subscribers to said courses of instruction purported to qualify them for and enable them to succeed in competitive examinations with credits sufficient to entitle them to be appointed to positions in various departments of the Government service of the United States. For this instruction the respondent charges a fee of \$9.75.

PAR. 2. The respondent during the said times referred to is and has been sending the aforesaid courses of instruction by mail from his place of business in the city of St. Louis, State of Missouri, in commerce to, into, and through other States of the United States and the District of Columbia to the individuals, the said applicants for and subscribers to said courses of instruction, who paid the respondent in money therefor.

PAR. 3. During the times above mentioned other individuals, firms, and corporations, located in the various States of the United States, have been engaged in the business of furnishing courses of instruction by correspondence sent by them through the United States mail to applicants and subscribers who have paid their money therefor, located in the various States of the United States other than the States from which the said courses were sent and the District of Columbia, and during the aforesaid times the respondent was, and still is, in competition in commerce with the said other individuals, firms, and corporations so engaged.

PAR. 4. Respondent offers his said courses of instruction to the public and to the aforesaid applicants and subscribers in advertisements

in newspapers, magazines, and elsewhere, and in printed circulars, in letters sent by him through the mail, and otherwise, in which he has made the following statements and representations:

INSTRUCTION

Wanted immediately.—Men—women, 18–55, qualify for permanent Government positions, \$105–\$250 month; experience not required; vacations with full pay; common education; many needed. Write, Instruction Bureau, 248, St. Louis, Mo.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that the salaries established for some of the Government positions referred to are not as high as \$250 per month to commence with, and further in that some of the said Government positions referred to are not available to persons over 50 years of age.

Wonderful jobs with U. S. Government for men—women, 18–55. \$125–\$250 month. About 40,000 openings yearly. Are you eligible? We advise you free. Write. Instruction Bureau, 364, St. Louis, Mo.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that the salaries established for some of the Government positions referred to are not as high as \$250 per month to commence with, and further in that some of the said Government positions referred to are not available to persons over 50 years of age.

GOVERNMENT POSITIONS

\$35 TO \$75 WEEKLY

Men—women, age 18 to 55

Railway mail clerk.	Immigrant inspector.
Forest ranger.	Seamstress.
R. F. D. carrier.	Auditor.
Special agent (investigator).	Steno-secretary.
City mail carrier.	U. S. border patrol.
Meat inspector.	Chauffeur-carrier.
P. O. clerk.	Watchman.
File clerk.	Skilled laborer.
General clerk.	Postmaster.
Matron.	Typist.
Steno-typist.	

Instruction Bureau, 316 Arcade Bldg., St. Louis, Mo. Send me free particulars how to qualify for positions marked "X." Salaries, locations, opportunities, etc. All sent free.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that it overstates or misrepresents the actual or probable earnings available to persons appointed to many

of the positions stated, and further in that for the positions named in the list the age limits vary, and for many of them the maximum age limit is considerably below 55 years. The advertisement or representation was used by respondent in the exact form as stated above up to about June 1, 1927, upon which date the position of "forest ranger" was taken from said list.

A large number of examinations will be held soon, and if you can get started right away, we can have you ready for one or more examinations within three or four weeks from now. You may mark three positions if you wish, and we will instruct you for all three at the same time, and for the one fee of only \$9.75, and that's all you pay; or you may confine all your efforts to one or two if you prefer to do so. Our object is to help you get your Government position just as quickly as possible.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that for some of the positions to which it refers no examinations were to be held soon after the issuance of such advertisement or representation, and for others, only a small number of examinations were to be held or likely to be held soon after its issuance. The said advertisement or representation was discontinued by respondent on or about January 26, 1931.

PLACES OF EXAMINATIONS.

Civil service examinations are held at almost all towns and cities of 3,000 population upward, and it is not necessary for anyone to go far in order to enter an examination. We keep our applicants advised as to how to keep in touch with the places and dates of examinations.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that civil-service examinations are not held at almost all towns and cities of 3,000 population upward, but are held in comparatively few of such towns and cities. The above advertisement or representation was discontinued by respondent on or about February 16, 1931.

U. S. Government stenographers and typists examination are announced to be held in almost all large cities throughout the United States about every 60 days. The demand for stenographers and typists has been good for several years.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that examinations for Government stenographers and typists are not and have not been announced to be held in almost all large cities of the United States about every 60 days, but in many of said cities only one or two examinations for said positions are or have been announced to be held yearly. The above advertisement or representation was discontinued by respondent several months prior to the date of the issuance of the complaint herein, and has not been used by him since that time.

There are good Government positions in almost every town, and in the larger cities there are thousands and thousands of places. In the smaller towns and cities there are places such as postmaster, assistant postmaster, post-office clerk, city carrier, village carrier, rural carrier, etc., while in the larger cities there are many kinds of places.

The above quoted advertisement or representation is untrue or misleading and deceptive in that the number of Government positions available in the larger cities of the United States is very much less than represented. The above advertisement or representation was discontinued by respondent on or about February 16, 1931.

FOREST RANGER—\$1,620 TO \$2,500 PER YEAR

Forest ranger has direct charge of all work in his section. This is patrolling forests, extinguishing fires, enforcing regulations, etc. It may also include supervising the grazing of stock, building of trails, etc. He is also a deputy game, fish, and fire warden with power to make arrests. Commence \$1,620 per year with possible promotion to \$2,500 per year.

Examinations are usually held in the following States, but it is not necessary to be a resident of one of these States, i. e., Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming. Subjects of examination are practical questions, clerical tests, education and experience. Where practicable, residents of above States are given preference.

The above quoted advertisement or representation is untrue or misleading and deceptive in that there are very few appointments made to the position of forest ranger in the Government service, and such appointments that are made are in practically all instances limited to qualified citizens of the State in which the forest is situated, and there is little if any opportunity for the appointment to said service of persons passing the examination who do not live in States having natural forests. The above advertisement or representation was discontinued by respondent on or about June 15, 1927, and has not been used since by him.

If you want unusual advantages of travel, 4 to 6 days' work, 4 to 6 days' free-full-time pay—hotel expenses—vacations with pay and travel. Act now! Prepare for the railway mail. Railway mail clerks needed to fill openings in this gigantic branch of Government service frequently. Regular positions pay \$1,900 to \$2,700 yearly.

PAY INCREASES AGAIN GRANTED RECENTLY

The position as railway mail clerk with all the splendid advantages of travel, interesting, stimulating change of scenery, new friends, new opportunities, can be obtained by this amazing short cut. With Mr. Ozment's coaching anyone having the equal of a grammar or common school education should pass this examination at a splendid grade.

Findings

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What Mr. Ozment has learned in his twenty years' experience in coaching thousands for choice positions, will stand you in good stead now. The work is unusually interesting; something new, something different always, new friendship; you work four or six days then you are off duty four or six days, free to spend almost all your time as you please, ball games, fishing, hunting, work around home, whatever you will, and on full pay straight through. Some arrange to engage in some other employment during the days off the road, and make almost enough that way to meet personal expenses and have all their salaries to deposit in the bank. The regular entrance salary is now \$1,900 with promotions to \$2,700 per year and a raise of at least \$100 is granted through the successive grades will run to \$225 per month. Railway mail clerks may also be promoted to a place as post-office inspector, or superintendent of a railway mail division, which pay about \$4,200 per year.

Does \$225 per month for 15 days' work (\$15 for each day you actually work), with an allowance for meals and hotel bills, a railroad pass or commission and an annual vacation with pay appeal to you? If you want one of these places enroll now for Ozment's coaching and go after it. One round trip in the service almost pays our fee. Moreover, Ozment's agreement insures your success or his coaching costs you nothing, as per his liberal agreement. Act now; enjoy one of these splendid places.

The above-quoted advertisement or representation is untrue or misleading and deceptive (1) in that many railway mail clerks are required to serve several years in a terminal station before being allowed to travel, and while working at said station no allowances for meals or hotel bills are granted; (2) in that there are no allowances for hotel expenses other than actual expenses up to a certain amount; (3) in that actual expenses, not exceeding \$3 a day, do not begin until the clerk has been on the road ten hours; (4) in that at least fifty per cent of all railway mail clerks receive no expense allowances for the reason that they are employed on short run or at terminals or transfers; and (5) in that said clerks are required to average eight hours' work a day for 306 days a year, and at least one-third of the entire force of said clerks are employed by terminals and transfers or in offices for eight hours a day, with no periods of time off.

The above advertisement or representation was discontinued by respondent subsequent to the issuance of the complaint herein and prior to February 16, 1931.

MONEY BACK AGREEMENT

Ozment's Instruction Bureau agrees to refund the full tuition paid, provided applicant does not secure a Government position after completing the course and taking the three Government examinations for which it prepares him.

NOTE.—Applicant is prepared for three examinations so that he may enter an examination and secure a position more quickly. If applicant desires to prepare for only one kind of examination and confine all efforts to one, he may do so.

The above quoted advertisement or representation is deceptive and misleading in that there is no specified time within which tuition money paid respondent will be refunded to applicants, and under said agreement years might elapse before the refunds could or would be made.

PAR. 5. The use as aforesaid of the advertisements or representations of respondent prior to their discontinuance by him, or prior to the changes made in the same by him, has tended to and has diverted trade from competitors of respondent.

PAR. 6. With the first letter sent by respondent to a prospective student or applicant for his course of instruction the following circular is enclosed:

PERSONAL INFORMATION (SEND NO MONEY) No. —

These questions are given to determine if you are eligible for a Government position, and the kind that is best suited for you.

Are you a citizen of the United States? _____ Age _____ Weight without overcoat _____ Height without shoes _____ Any defect of heart, lungs, ears, eyes, limbs, or speech _____ Any physical defects, if so, describe here _____ What grade did you reach in school? _____ Have you taken a business course, if so what kind? _____ What is your occupation? _____ Where do you prefer a position? _____ Have you had military service? _____ How soon do you wish to complete course? _____ Have you attended night school or taken a correspondence course? _____ Name the positions you prefer _____ Name _____ P. O. _____ St. or R. F. D. _____ State _____

The above circular or questionnaire is filled out and sent to respondent before the prospective student or applicant enrolls and the respondent does not enroll students for courses of instruction for those positions which by reason of age or physical disqualifications they are manifestly ineligible.

PAR. 7. The statements and representations set forth in paragraph 4 herein are false and misleading, as indicated, and the use of said statements and representations by respondent, C. J. Ozment, in the manner and form made has the capacity and tendency to mislead and deceive the public and prospective applicants for and subscribers to said courses of instruction into the erroneous belief that said statements and representations are true and to induce persons to apply and to subscribe to said courses of instruction in reliance upon and by reason of their belief in the truth and accuracy of said statements and representations, and thereby to divert trade to respondent from competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice

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of the public and respondent's competitors and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, and the stipulation of facts entered into by and between the respondent and the chief counsel of the Commission, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, C. J. Ozment, his agents, representatives, and employees, do cease and desist from making statements and representations in advertisements in newspapers, magazines, and periodicals, and in letters, printed circulars, pamphlets, booklets, and other advertising literature, circulated and distributed in connection with the offering for sale and sale in interstate commerce of courses of instruction for positions in the Government service of the United States, as follows:

(1) That the salaries established for the positions are higher than they actually are and that the positions are available to persons over 50 years of age when such is not the fact;

(2) That the examinations for all positions for which respondent offers courses of instruction are to be held immediately or within a short time, when such is not a fact;

(3) That civil-service examinations are held at almost all towns and cities of 3,000 population upward, and that it is not necessary for anyone to get far in order to enter such an examination, when such is not the fact;

(4) That examinations for United States Government stenographers and typists are announced to be held in almost all large cities throughout the United States about every sixty days, when such is not the fact;

(5) That there are good Government positions available, and that in the larger cities there are thousands and thousands of such places, when such is not the fact;

(6) That appointments to the position of forest ranger are available and that it is not necessary to be a resident of the States within which the forest ranges are located in order to secure appointments to such positions, when such is not the fact;

(7) That railway mail clerks immediately upon appointment are allowed to travel with allowances for meals or hotel or other expenses and that they are off duty half the time with full time pay, when such are not the facts;

(8) That the respondent agrees to refund the full tuition paid by applicants or subscribers without specifying the time in which such money will be repaid.

It is further ordered, That respondent shall, within 60 days after service upon him of a copy 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 and conformed to the order to cease and desist hereinabove set forth.

IN THE MATTER OF
 NUGRAPE COMPANY OF AMERICA

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

Docket 1576. Complaint, Feb. 27, 1929¹—Decision, May 19, 1931

Where a corporation engaged in manufacture and sale of a sirup so made through removal of certain ingredients from and addition of alcohol and others to, a California grape juice concentrate upon which was based the "Merchandise No. 25" used by it, that there resulted a grape extract, containing no more than 20 per cent of grape juice, depending chiefly on addition of artificial coloring and tartaric acid for flavor and color, as did the carbonated beverage made therefrom in accordance with its directions by its very numerous bottler vendees, and others,

- (a) Displayed its corporate name including word "Nugrape" in advertisement, offer, and sale of aforesaid product and represented, designated, and referred to its aforesaid concentrate and beverage as "NuGrape", and, in smaller letters, as a "flavor you can't forget", in advertising matter, posters, tacking signs, and magazine and newspaper advertisements displaying persons reaching for the bottled beverage, and the slogan "reach for NuGrape";

¹ Complaint amended, after argument, to charge respondent as a Delaware instead of a Georgia corporation, by the following order:

"In the complaint issued on the 27th day of February, 1929, against the NuGrape Company, respondent herein, it is alleged in paragraph 1 that the respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. This complaint was served upon the respondent on March 1, 1929, and respondent, in its answer filed March 28, 1929, denied that it was a corporation by virtue of the laws of the State of Georgia, but answered fully in all other respects and submitted itself to the jurisdiction of the Commission. Thereafter, in the course of taking testimony, it developed that respondent is a corporation under the laws of the State of Delaware, and that it is the successor of the NuGrape Company of America, a Georgia corporation, and that all the property and assets of the Georgia corporation had been transferred to the Delaware corporation, under an agreement in writing dated December 19, 1924. At the time of the said transfer, the officers, directors and stockholders of the NuGrape Company of America, a Georgia corporation, were identically the same as the officers, directors, and stockholders of the NuGrape Company of America, the Delaware corporation. Since the said transfer, no business has been carried on by the NuGrape Company of America, the Georgia corporation, although it has not been dissolved. In the brief in support of the complaint filed herein on February 24, 1931, and served upon respondent on February 26, 1931, counsel for the Commission stated that 'the Commission, at or before the time for final argument, will be asked to amend the complaint herein by striking out the word "Georgia" in line 3 of paragraph 1 and inserting in lieu thereof the word "Delaware."' At the final argument before the Commission on April 15, 1931, in accordance with the above quoted declaration contained in the brief in support of the complaint, counsel for the Commission moved the Commission that the amendment stated be made in conformity with the proof contained in the record, now, therefore,

"It is ordered, That the complaint herein be and the same is hereby amended by striking out the word 'Georgia' in line 3 of paragraph 1 and inserting in lieu thereof the word 'Delaware.'"

(b) Displayed or caused to be displayed its corporate name as above set forth and name NuGrape upon barrels in which it shipped to bottler and jobber vendees its said concentrate or sirup, upon labels prepared by it for bottled sirup for drug store and fountain use, and upon bottles made under license by it for the aforesaid beverage, together with slogan "A flavor you can't forget", and, excepting beverage bottles, some such statement as "prepared from grape juice, tartaric acid, cane sugar and artificial certified color", and/or "added" "fruit acid" or "part grape", and upon crown or bottle caps of beverage bottles, ordinarily removed before serving consumer, the words "artificial color NUGRAPE * * * SODA, containing in addition to grape juice, simple sirup tartaric acid and water;"

With tendency and capacity to mislead and deceive ultimate purchaser into believing that he was buying a beverage, the flavor and color of which were derived chiefly from the fruit and juice of the grape, and with effect of diverting trade from competitors dealing in grape juice and other grape, and imitation grape, products, and truthfully advertising and branding their products, and with tendency so to do;

Held. That said practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Mr. Harold Hirsch, Mr. John P. Stewart, Mr. Thomas J. Long, and Mr. Wellborn B. Cody, of Atlanta, Ga., and *Mr. W. Parker Jones,* of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT²

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the manufacture of a concentrate or sirup, and in the sale thereof throughout the various States of the United States for manufacture into a beverage, and with principal office and place of business, and manufacturing and/or bottling plants in Atlanta, and other plants in other cities, with naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, names the concentrate and beverage made and dealt in by it, as above set forth, not made wholly or in substantial quantity of the juice of the grape or fruit thereof, though so made as to simulate the same in appearance, odor, and flavor, "NuGrape", and so advertises and refers thereto, and brands and labels the bottles or other containers thereof as to import or imply

²As amended.

that the product in question is composed of the juice or fruit of the grape, or is so composed in substantial quantity.

The use by respondent, as alleged, of the "trade name, brand, or designation 'NuGrape' in connection with respondent's said product and/or the use of the word 'grape' in connection with respondent's said product has the capacity and tendency to mislead or deceive the purchasing public into the erroneous belief that its said products are made wholly and/or in substantial quantity of the juice of the grape, or the fruit of the same", and respondent's "said trade name, brand, or designation 'NuGrape' and/or the word 'Grape,' either used independently or in connection or conjunction with the word or syllable 'Nu' have the capacity and tendency to mislead and do mislead the purchasing public into the belief that respondent's said product is composed of the juice of the grape, or the fruit of the same, and thereby divert trade from truthfully marked products"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent. The NuGrape Company of America, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Federal Trade Commission, and the Commission having considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent NuGrape Company of America has been for several years last past and now is a corporation organized under and by virtue of the laws of the State of Delaware, with its principal office in the city of Wilmington in said State, and with its executive offices and principal manufacturing plant in the city of Atlanta, State of Georgia. Respondent, NuGrape Company of America, a Delaware corporation, is a successor to NuGrape Company of America, a Georgia corporation. Said Georgia corpora-

tion was engaged in business in the several States of the United States, with its principal office and place of business in the city of Atlanta, State of Georgia, up to December 19, 1924, when by action of its stockholders, it was decided that the company be reorganized as a Delaware corporation under the same name. Under date of December 19, 1924, an agreement in writing was entered into between NuGrape Company of America, the Georgia corporation, and NuGrape Company of America, the Delaware corporation, whereby all of the property, real, personal, and mixed, tangible and intangible, including goodwill, the trade-mark "NuGrape", No. 164168 and Patent Design Bottle, No. 54682, and all of the business of the said Georgia corporation was transferred to NuGrape Company of America, the Delaware corporation. At the time of the said transfer the officers, directors, and stockholders of NuGrape Company of America, the Georgia corporation, were identically the same as the officers, directors, and stockholders of NuGrape Company of America, the Delaware corporation. Since the said transfer no business has been carried on by NuGrape Company of America, the Georgia corporation, although it has not been dissolved.

PAR. 2. Respondent is, and has been, engaged for more than two years last past in business in the manufacture and sale of a concentrate or sirup, called by it "NuGrape" and in the sale of the same in interstate commerce to numerous bottling plants and jobbers located in various States of the United States, for the purpose of having manufactured therefrom a beverage also known, advertised, and sold in interstate commerce under the name "NuGrape", causing its said concentrate or sirup when so sold to be transported from the place of manufacture in one State to purchasers thereof located in other States of the United States. In the sale of its said "NuGrape" sirup in the various States of the United States, respondent at all times hereinafter mentioned has been, and still is, in competition with other corporations, individuals, firms, and partnerships likewise engaged in interstate commerce in the sale of sirups or concentrates to be used in the making of beverages, and in the sale of grape juices and other grape products and imitation grape products and beverages made therefrom. Respondent manufactures its "NuGrape" sirup in plants located at Atlanta, Ga., Dallas, Tex., Baltimore, Md., and Chicago, Ill., and has also had plants for the manufacture of said sirup at Little Rock, Ark., Jacksonville, Fla., Kansas City, Mo., and Los Angeles, Calif. The sirup has been and is shipped by respondent in 30 and 50 gallon barrels to some four or five hundred bottling plants located in various States of the United States, and to jobbers. Not more than 1 per cent of said sirup is sold to jobbers, who in turn

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sell the same to drug stores or soda fountains. The sirup so sold and distributed is used both by the soda fountain and the bottler in preparing the "NuGrape" beverage in the proportion of 1 ounce of said sirup to 5 ounces of carbonated water, and the beverage thus prepared retails for 5 cents a bottle. During the calendar year 1928 the respondent manufactured and sold slightly in excess of 200,000 gallons of "NuGrape" sirup and in 1929 about 105,000 to 110,000 gallons of said sirup.

PAR. 3. Since May, 1928, the NuGrape sirup manufactured and sold as above indicated by respondent has been prepared as follows:

In the manufacture of 40 gallons of said NuGrape sirup respondent uses 1 gallon of Merchandise No. 25, the remaining 39 gallons consisting of water, sugar, tartaric acid, and certified coloring matter. Merchandise No. 25 which is purchased by respondent from Fritzsche Bros., Brooklyn, N. Y., and which is also designated by its manufacturers as "Fritsboro True Grape Aromatics, New Process", has for its base a concentrate of grape juice obtained from California, which concentrated grape juice is produced from pure grape juice by a vacuum process in which about 4 or 4½ gallons of said grape juice are concentrated to 1 gallon. The sugar or solid content of the grape prevents further concentration, if the product is to remain in liquid form. This concentrated grape juice so produced in California is put through a further process by Fritzsche Bros., which process is described by them as follows: "In order to bring about this strength that we sell it at we add aromatic grape concentrate made from grapes by our own secret process. The grapes we use are Concord and other grapes in that concentrate which are used to bring it up to 8 to 1." A production specialist of said Fritzsche Bros. refused to give any further information about their so-called secret process on the ground that it would be disclosing trade secrets. Analyses of said Merchandise No. 25 by chemists of the Food, Drug and Insecticide Administration of the Department of Agriculture of the United States made in the spring of 1930 showed that it contained from 72 to 74 per cent of solids, also tartaric acid, malic acid and citric acid, and 13.85 per cent of alcohol. Unfermented grape juice contains only negligible quantities of alcohol, less than one-half of 1 per cent, usually, and the product sold the Fritzsche Bros. by its California producers contains no alcohol. Alcohol is added to the California concentrated grape juice, in addition to the so-called aromatic grape concentrate, to produce Merchandise No. 25. The addition of alcohol and of the aromatic grape concentrate to the California concentrated grape juice indicates in certain respects a grape juice concentrate of 8 to 1, but which contains only the sugar contents to be expected in a

concentrate of 4 or 5 to 1. Exhaustive analyses made by chemists of the United States Department of Agriculture of Merchandise No. 25, NuGrape sirup and NuGrape beverage, show that said Merchandise No. 25 is so changed by the removal of certain solids, such as fruit sugars and the removal of certain true fruit acids, and by the addition of a substantial amount of alcohol that it has ceased to be a pure concentrated grape juice and has become a grape extract and that NuGrape sirup is an artificially colored invert sugar sirup containing added acid, principally tartaric, and not more than 20 per cent of grape juice, and that the NuGrape beverage, made from respondent's NuGrape sirup, is an artificially colored beverage sweetened with invert sugar and acidulated with said added acid and containing no more than 4 per cent of grape juice. Respondent's product NuGrape sirup does not contain the natural fruit or juice of the grape in quantity sufficient to give it its color or flavor. The color of said NuGrape sirup is derived from the added certified coloring matter, or artificial coloring, and the flavor of said NuGrape sirup is derived chiefly from the added tartaric acid. The carbonated beverage NuGrape, produced by bottlers and soda water dispensers according to respondent's directions from NuGrape sirup, derives both its color and its flavor chiefly and substantially from the certified or artificial coloring matter and tartaric acid, both of said ingredients being added by respondent to Merchandise No. 25 in the production of its NuGrape sirup. The tartaric acid so added is not found as such in grapes or grape juices but is obtained from crude argols, commonly called wine lees, by-products, or precipitates, obtained in the treatment of grape juice or the manufacture of wine.

PAR. 4. Respondent corporation in the course and conduct of its said business as herein before described, during the years 1928, 1929, and 1930, as an inducement to customers and prospective customers in the sale of its products in the several States of the United States, has caused advertising matter to be prepared, published, and circulated in and among the various States of the United States in which it has represented, designated, and referred to its products as "NuGrape" followed by the slogan "A flavor you can't forget" and by means of posters, tacking signs, and magazine and newspaper advertisements displaying persons reaching for beverage bottles with the slogan "Reach for a NuGrape" prominently displayed. On the beverage bottles displayed in the above described advertising matter are the words NuGrape and Soda. Typical of this advertising matter is a poster, designed for 42 inches of space, which shows a tennis player reaching for a bottle labeled—

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NuGrape, a flavor you cant forget and also Soda
 It makes this remark,
 When you were never so thirsty in your life!
 Reach for NuGrape.

The product is priced at 5 cents and at the bottom of the advertisement appears the words:

NuGrape—a flavor you cant forget

The words "A flavor you can't forget" are in much smaller letters than the word "NuGrape".

The labels affixed by respondent to the barrels in which its NuGrape sirup is shipped to bottlers and jobbers contain the words—

NUGRAPE

A flavor you can't forget
 Reg. U. S. Pat. Off.

PART GRAPE

Prepared from grape juice, tartaric acid, cane sugar,
 and artificial certified color

Manufactured by

NUGRAPE COMPANY OF AMERICA

ATLANTA, GA.

The labels prepared by respondent to be affixed to the bottles of NuGrape sirup used in drug stores and soda fountains contain the following words:

Fount Sirup

NUGRAPE

A flavor you can't forget
 Reg. U. S. Pat. Off.

Contains less than 1-100 of 1 per cent Benzoate of Soda

Prepared from pure concentrated grape
 juice and pure cane sugar. Added
 fruit acid and certified color.

Manufactured by

NUGRAPE COMPANY OF AMERICA

ATLANTA, GA.

On the bottles in which the NuGrape beverage is sold the following words appear:

NUGRAPE

A flavor you can't forget
 SODA

Trade-Mark Registered

Min. contents 6 fluid ounces

The bottles containing the NuGrape beverage are made and distributed by persons licensed to do so by respondent from patterns patented or copyrighted by respondent and bearing, blown in the bottles, words and letters furnished or dictated by said respondent.

Before July, 1928, the beverage bottles so manufactured in accordance with respondent's directions contained the words "Imitation grape" "Not grape juice" below the word "NuGrape." After respondent began to purchase Merchandise No. 25 from Fritzsche Bros. in 1928 and to use said Merchandise No. 25 in the manufacture of its NuGrape sirup as above described, it ceased using the words "Imitation grape", "Not grape juice", and instead used and has continued to use down to the present time the word "soda" without making it known that the said soda is an imitation, artificially colored and flavored. Respondent also furnishes the designs for the crowns or bottle caps to be placed upon the bottles in which the beverage NuGrape is sold to the consuming public, and caps being used in 1930 upon the said bottles contained the following lettering:

Artificial color

NUGRAPE

Reg. U. S. Pat. Off.

SODA

Containing in addition to grape juice

Simple sirup, tartaric acid, and water.

The words "artificial color", "NuGrape", and "soda" upon said crowns or bottle caps are quite prominent and legible but the custom of the trade in serving beverages of this nature is to remove the cap or crown and serve the drink in a glass or bottle. The cap or crown is not usually seen by the consumer.

PAR. 5. Both the NuGrape sirup and the bottled beverage, NuGrape, are sold in competition with grape juices and other grape products and imitation grape products sold by other corporations, individuals, firms, and partnerships in interstate commerce. Respondent's advertising, as aforesaid, and the wording of labels, crowns, bottles, posters, and signs, the name NuGrape and the coloration of the beverage are misleading and deceptive and the aforesaid use of the same has the tendency and capacity to mislead and deceive the ultimate purchaser of NuGrape beverage into the belief that he is buying a beverage or soda the flavor and color of which is derived chiefly from the juice or fruit of the grape, and tends to and does divert trade from competitors who truthfully advertise and brand their products.

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CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony in support of the complaint and in opposition thereto, and on briefs and argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

It is ordered, That the respondent, NuGrape Company of America, its officers, representatives, agents, servants and employees, cease and desist from—

(1) Using or authorizing the use by others, in interstate commerce of "NuGrape" or the word "grape" either alone or in conjunction or combination with any other word or words, letter or letters, as a trade name, brand, or designation in advertising, or on labels or bottles or barrels or other containers, or on the caps, crowns, or stoppers thereof, in connection with the sale or distribution of a product which is not composed wholly of the natural fruit or juice of grapes, except and unless such product is composed in such substantial part of the natural fruit or juice of grapes as to derive therefrom its color and flavor, and "NuGrape" or the word "grape", wherever used as above described, is accompanied with a word or words, equally conspicuous with it in character or type, clearly indicating that such product is composed in part of material or materials other than the natural juice or fruit of grapes, or if the beverage produced from respondent's sirup is not composed in such substantial part of the natural fruit or juice of grapes as to derive therefrom its color and flavor that respondent, its officers, representatives, agents, servants, and employees shall cease altogether from the use of the words "NuGrape" or "grape" in the connection indicated in this paragraph, except and unless, in the same con-

nection, it is made prominently to appear that the product is an imitation, artificially colored and flavored.

(2) Using or authorizing the use by others, in interstate commerce, in advertising, or on bottles, barrels or other containers or on labels, crowns, stoppers, or otherwise, of any word or words falsely representing or suggesting that a product is made from the natural juice or fruit of grapes or contains the natural juice or fruit of grapes in such substantial quantity as to derive therefrom its color and flavor.

And it is further ordered, That the respondent, The NuGrape Company of America, within 60 days after the date of service upon it of this order, shall 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 hereinbefore set forth.

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IN THE MATTER OF

WILLIAM A. HIGGINS & COMPANY, INCORPORATED

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

Docket 1910. Complaint, Feb. 4, 1931—Decision, May 25, 1931.¹

Consent order requiring respondent to cease and desist from branding, labeling, or naming sacks or other containers of almond nuts, with or advertising same under, names or letters "Nonpareil", "I. X. L.", "Ne Plus", "Peerless", or "Drake" unless the nuts are grown in California and the names in question are used to designate the true varieties thereof; as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Crane, Inness & Arnold, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that William A. Higgins & Co., Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and doing business under the laws of the State of New York, with its principal place of business in the City of New York. Its business for the last five years has been and now is the importing of nuts from Italy and France, especially almonds and walnuts, and the sale and distribution of nuts, including sales and shipments to purchasers in other States from its headquarters in New York City, N. Y.

PAR. 2. An organization of growers of almonds in California, known as California Almond Growers' Exchange, has in the past ten years regulated the grading and branding of the almonds grown by its members, and has adopted certain names or brands indicating the quality and grade of the product of members handled by the association. Said association has used the following names of brands: First quality, "Nonpareil"; second quality, "I X L" and "Ne Plus"; third quality, "Peerless" and "Drake". By adoption and long use, these names and brands have come to be applied exclusively to California products, and as such are well known and accepted in the trade as indicating nuts of superior quality and well graded types.

¹ As modified. Original order made as of March 25, 1931.

Order

PAR. 3. In the course of its business as aforesaid, the respondent has caused the names and brands of said California Almond Growers' Exchange, namely, "Nonpareil", "Ne Plus", and "California Drake" to be printed on bags and containers, and has placed in such bags and containers bearing said names and brands, almonds imported by it, and has sold and caused to be shipped to points outside the State of New York, said almonds in said bags and containers.

PAR. 4. The respondent, in its business as aforesaid, is in competition in interstate commerce with importers of almonds for sale in this country who do not represent their wares to be other than imported, and with producers and distributors of nuts, including almonds, in this country, and particularly with growers and distributors of California almonds.

PAR. 5. The acts of respondent in using the names and brands of California almond growers, as above described, has the tendency and capacity to, and does, mislead purchasers of the almonds so misbranded and sold by respondent, to believe that they were grown in California and were well and carefully graded by the California Almond Growers' Exchange, and were of a superior quality, as indicated by the brands used; and said acts of respondent tend to divert and to divert from said California Almond Growers' Exchange and its members sales of California almonds of the quality indicated by said brands.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

MODIFIED ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 4th day of February, 1931, issued its complaint against William A. Higgins & Co., Inc., respondent herein and caused the same to be served upon said respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On March 4, 1931, respondent filed herein a formal written answer to said complaint. On March 17, 1931, the said respondent filed herein a written withdrawal of said formal answer and filed in lieu

thereof a written answer wherein it elected to refrain from contesting this proceeding; and the Commission having considered and accepted such withdrawal and such last named answer, on March 25th, 1931, entered an order to cease and desist herein.

The Commission being further advised in the premises the said order to cease and desist is hereby modified to read as follows:

Ordered, That respondent William A. Higgins & Co., Inc., its agents, employees, or successors do cease and desist from doing directly or indirectly any and all of the acts hereinafter designated and set forth in paragraph 1 hereof, in connection with the sale or offering for sale of almond nuts in interstate commerce, or in the District of Columbia, as follows:

PARAGRAPH 1. From branding, labeling, or naming or causing to be branded, labeled, or named sacks, bags, boxes, or other containers of almond nuts or advertising such nuts, with or under the names or letters, "Nonpareil", "I.X.L.", "Ne Plus", "Peerless", or "Drake", unless such almond nuts are grown in the State of California and the name, "Nonpareil", the letters "I.X.L.," and the names "Ne Plus", "Peerless", or "Drake", are used to designate the true varieties of such nuts.

PAR. 2. It is further ordered that respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

CHARLES NESSLER, AN INDIVIDUAL TRADING UNDER THE NAME AND STYLE OF C. NESTLE COMPANY, AND ALSO UNDER THE NAME AND STYLE SOCIETY FOR THE ADVANCEMENT OF HAIR AND BEAUTY SCIENCE; AND NESTLE-LEMUR COMPANY AND CHARLES NESSLER AS AN OFFICER THEREOF

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

Docket 1833. Complaint, May 16, 1930—Decision, June 5, 1931

Where an individual engaged in the manufacture, sale, and/or lease of hair-waving machines, and appliances, instruments and supplies for use in connection therewith, including a so-called text-o-meter for testing the hair; in pursuance of plans for promoting and extending his said business, and in connection therewith for impressing the trade and public with the independence and impartiality of an organization created and controlled by him, and the value of its approval and recommendation,

- (a) Caused to be organized an ostensibly disinterested association under the name "Society for the Advancement of Hair and Beauty Science," and a board of trustees therefor, with staff of administrative and advisory officers and office provided by him, and caused it to be announced, as coming from said society, that it had been formed by those concerned in the development and extension of improved and scientific methods in the trade, to furnish it and the public reliable and disinterested advice on all matters relating to the chemistry of beauty parlors, hair treatments, hair dyes, permanent waving, and such other treatments as might be practical, and all other subjects or matters that might arise from time to time in the trade in connection with the service of the public; fact being that aforesaid society was not a bona fide independent and impartial organization of hair dressers, beauty-parlor operators, or others interested as above set forth, but was composed of business associates, friends, employees, or others related in some manner or degree to himself, and of employees of the corporate successor to his business, and expense of organizing, operating, and maintaining such alleged society had been and was advanced by him;
- (b) Caused the society to form, ostensibly, a so-called examination board to investigate, as represented to trade and public, claims of manufacturers and merits of products or methods advertised or suggested by them, and practices and methods from time to time introduced or followed in the trade, and represented that the society had and would maintain a legal adviser to report to it and procure actions against those who were or might be attempting to "foist inferior goods or treatment on their patrons"; facts being no examinations were held by the society to ascertain merits of products other than those offered and leased by said individual, or to enable society to furnish fair and disinterested advice and suggestions to trade and public, and so-called examinations were merely a method of

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- presenting products of said individual to the public, falsely represented as supported by the unbiased judgment and impartial recommendation of a body of trained and experienced individuals acting in the interest of the public;
- (c) Caused the society to assume and continue publication of his "Permanent Waver and Hair Dresser" trade organ, as "Hair and Beauty Science," the change being announced with such statements as that the leaders of the industry had "combined their great resources for advancement" in connection with the "new standards" imposed by "the great growth of scientific hair treatment and beautification" and that the society was undertaking publication of the journal, in question, "that its influence and inspiration" might "become more important than was previously possible";
- (d) Represented in advertisements in daily newspapers and trade journals and in such publications as aforesaid Hair and Beauty Science that a method had been discovered by which the hair could be permanently waved without injury, but that use of aforesaid text-o-meter was necessary for such purpose, without disclosing his responsibility and interest therein; facts being use thereof was not necessary for any hair treatment, and there were other efficient competitive machines suitable for the purpose without use of said text-o-meter;
- (e) Represented in aforesaid Hair and Beauty Science that said text-o-meter, made, sold, or leased under the company trade name employed by him in conducting his said business, "had been examined, approved and endorsed" by the society, and would be and was used by all hair dressers who had passed its examination, based on said individual's textbook, without disclosing that he was also the manufacturer of the instrument so endorsed, or any information or notice that the society's membership was composed largely of his employees, and was his instrument or agency for extension of his business, and exploitation of his apparatus;
- (f) Stated in aforesaid Hair and Beauty Science that "numerous beauty parlor owners and employees were attempting to give permanent waves without the slightest qualification or examination, but that this would be changed as a result of examinations of hair operators or of those engaged in the operation of beauty parlors and hair dressing establishments conducted, and to be conducted by the society," and represented therein that every hair dresser who had passed the society's examination would use a hair "text-o-meter" to test the client's hair in advance, and that in his or her booth should appear the graduation certificate of the society, bestowed and to be bestowed only on those found competent, and advised customers to look for aforesaid badge; facts being that it was his policy and practice to cause to be accepted as eligible for approval by the society, and for badges and certification of competency, only those owning or operating said text-o-meter, or contemplating purchase or operation thereof, and the "examinations" necessarily resulted in the further and more extended use of the text-o-meter and other machines sold or leased by him;
- With the capacity and tendency to mislead and deceive the public into the purchase or use of said text-o-meter in the erroneous belief that it had been or was endorsed and recommended by an organization of disinterested individuals representing the trade, as necessary for use in testing the hair

Complaint

preliminary to permanent waving, and into purchase or use of other machines, instruments, appliances, and products offered for sale by him and his organization, and thereby to divert trade from competitors selling their products by fair and truthful representations:

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

Mr. James M. Brinson for the Commission.

Mr. George F. Handel and *Mr. Joseph R. Kelly*, of *Swiger, Scandrett, Chambers & London*, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Charles Nessler, doing business as C. Nestle Co., and also under the name and style Society for the Advancement of Hair and Beauty Science, engaged in the manufacture of machines for waving the human hair, and of appliances, instruments, and supplies for use in connection therewith, including a so-called Text-O-Meter for testing the hair, and in the sale and lease of aforesaid articles to purchasers and proprietors of hair dressing and beauty parlors, and with place of business in New York City, and respondent Nestle-Lemur Co.,¹ an Ohio corporation, successor to aforesaid Nestle Co., and with principal office and place of business also in such city, with creating and exploiting, misleadingly, ostensibly informed and disinterested endorsement of product, and advertising falsely or misleadingly, in respect thereof, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent Nessler, as charged, engaged as above set forth, in pursuance of plans and policies for extending the use of his aforesaid text-o-meter and other appliances, and the promotion of his business, caused to be organized an unincorporated association, under the designation Society for the Advancement of Hair and Beauty Science, ostensibly disinterested, but in fact financed and controlled by him, and, following its organization, by respondent Nestle-Lemur Co., and composed of friends, associates and employees.

¹ Organized by consolidation of the Lemur Co., theretofore engaged in manufacture and sale among the various States of supplies and equipment for use in beauty parlors, and of said C. Nestle Co., the unincorporated concern owned and conducted by respondent Nessler, and engaged in conducting the manufacturing and distributing business formerly conducted by said Lemur Co., and said Nestle Co.

In order to make his said scheme or plan and the deception involved therein more effective, respondent Nessler, as alleged, did the following acts and things:

(a) Organized a so-called board of trustees with staff of officers, for such society and provided an office therefor;

(b) Caused it to be announced, as from the society, that it had been formed by those interested in development and extension of improved and scientific methods in the trade, to furnish it and the public reliable and disinterested advice on all matters relating thereto, such as chemistry of beauty parlors, hair treatments, etc.;

(c) Caused to be formed, ostensibly by the society, a so-called examination board to investigate claims of manufacturers, and merits of their products, methods or practices, and of practices and methods introduced, or followed in the trade, facts being no examinations, fair or otherwise, were conducted under auspices of such society to ascertain the merits of any machines or products other than those of respondent, in order to enable society to furnish fair and disinterested advice and suggestions to trade and public, and so-called examinations were no more than devices and methods by which to present respondent's products to the public as supported by the unbiased and impartial judgment and recommendation of "a body of trained and experienced individuals acting in the interest of the public";

(d) Represented the society had and would maintain a legal adviser to report, and bring proceedings against those attempting both to foist inferior goods or treatments on their patrons;

(e) Caused the society to assume and conduct publication of his trade organ under the new name "Hair and Beauty Science," with an announcement calculated to create the impression that said periodical as the organ of the supposed society would serve such society's professed and purported objects;²

(f) Advertised in daily papers, in trade journals, and in said "Hair and Beauty Science" that a method for permanently waving hair without injury had been discovered, and that use of said textometer was necessary therefor, facts being said machine or device was not necessary for so-called permanent waving, or any other proper or desirable hair treatment, and there were competitive articles suitable for the aforesaid purposes, or any other treatment associated in the public mind with beauty parlors or hair dressing establishments;

(g) Represented in said Hair and Beauty Science that numerous beauty-parlor owners and employees were attempting to give permanent waves without the slightest qualifications or examination, that this would be changed as a result of examination of such persons,

²Announcement referred to is quoted below, in the findings, at page 134.

conducted and to be conducted by the society, and that if the hair dresser passed the same he or she would use a text-o-meter, for the client's hair in advance and should have in his or her booth the society's graduation certificate, and advised customers to look for the badge which would be bestowed only on those found competent, facts being only those owning or operating so-called text-o-meters, or intending or contemplating purchase or operation thereof, or of other products of respondents were accepted as eligible for the society's approval, and for badges and certificates of competency, and such examinations as were conducted necessarily resulted in further and more extended use of said text-o-meter and aforesaid other machines and products;

(h) Represented in aforesaid Hair and Beauty Science that the text-o-meter made, sold, or leased by C. Nestle Co. (the trade name employed by him), had been examined, approved, and endorsed by the society and would be and was used by all hair dressers who had passed the examination, based on the text written by respondent "Charles Nessler," without disclosing the author referred to as the manufacturer of the instrument so endorsed, or that the society composed as above set forth was merely his instrument or agency for extension of his business and exploitation of his apparatus;

(i) Respondent Nestle Lemur Co., further, as charged, "succeeded to the control of and still controls and has caused and still and now causes the said alleged Society for the Advancement of Hair and Beauty Science to represent itself, and appear, to be an independent society operated by the trade, and under cover of such professed or reputed independence to exploit or promote the sale or use of the text-o-meter and other machines, instruments, and products of said respondent, and said respondent has withheld from and failed and neglected to disclose to the trade or the public its connection with, or control of such alleged society."

The practices, as alleged, "of respondent Charles Nessler under the name of C. Nestle Co. and as Society for the Advancement of Hair and Beauty Science, and the practices of respondent Nestle-Lemur Co. and of respondent Charles Nessler, in connection therewith have had and have and each of them has had and has the capacity and tendency to mislead and deceive the public into the purchase or use of the product text-o-meter in the belief that it has been and is endorsed and recommended by an organization of disinterested individuals representing the trade, and has been and is necessary to effect permanent waving of the human hair, and into the purchase or use of other machines, instruments, appliances, and

products offered for sale by respondents, and thereby to divert trade from competitors of respondents.

"Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to definite its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon Charles Nessler, an individual trading under the name and style of C. Nestle Co., and also under the name and style of Society for the Advancement of Hair and Beauty Science, and Nestle-Lemur Co., a corporation, and Charles Nessler as an officer thereof, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondents having entered their appearance and filed answers, testimony and documentary evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission, on the complaint, answer, testimony and evidence, briefs and argument by counsel for the Commission and counsel for respondent, and the Commission having duly considered the same, now makes this its report, in writing, and states its findings as to the facts and conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Charles Nessler, is an individual residing in the City of New York and State of New York, who is an inventor and manufacturer of machines for waving the human hair and of appliances, instruments, and supplies for use in connection therewith. He has engaged in the sale and transportation from his place of business in the City of New York and State of New York of such products under the name and style of C. Nestle Co., to purchasers in the various States of the United States other than the State of New York, in competition with individuals, partnerships, and corporations similarly engaged in like commerce. He has been, and was, until a consolidation with respondent Lemur Co. as hereinafter set forth, president of said C. Nestle Co., and the owner thereof, and for many years said respondent Charles

Nessler, by, through, and with his said trade name C. Nestle Co., engaged in the practice of leasing to proprietors of hair dressing and beauty parlors, machines, apparatuses, and appliances, invented and manufactured by him, and in their transportation from the City of New York into, and through the various States of the United States other than the State of New York for use by lessees of such machines, apparatuses and appliances. More particularly respondent Charles Nessler offered for sale and sold or leased among other products in interstate commerce, a machine for testing the human hair with respect to its susceptibility to permanent waves, and the method by which to accomplish it which had been invented and manufactured by him called or designated text-o-meter.

In order to advertise, promote, and induce the sale of such machine and other machines or their rental and use, and the sale of appliances and products of various kinds for use in connection therewith, or supplemental thereto by and through his so-called C. Nestle Co., respondent Charles Nessler published, and circulated in the various States of the United States, among purchasers and prospective purchasers of his aforesaid products, especially among places of business described as beauty parlors and hair dressing establishments, a periodical which he called the "Permanent Waver and Hair Dresser."

In the month of April, 1928, respondent Charles Nessler, in pursuance of his plans and policies for extension of the use of his text-o-meter and other machines or appliances sold or leased by him and the promotion generally of his products and the further establishment of good will toward his business and products, caused the organization of an unincorporated association represented as herein-after described, and purporting to be a disinterested association, unrelated to him or his business, which he caused to be designated or called the Society for the Advancement of Hair and Beauty Science. In furtherance of his purpose to impress the trade and public with the independence and impartiality of such alleged society and the consequent value and worth of its approval and recommendation along the line for which it purported to be formed, he caused to be organized for it a so-called board of trustees with a staff of administrative and advisory officers. He provided an office for it and its staff or reputed staff in the City of New York and State of New York. He thereupon caused to be announced to the trade as from such alleged society, that it had been formed by those concerned in the development and extension of improved and scientific methods in such trade for the purpose of furnishing it and the public

reliable and disinterested advice on all matters relating to the chemistry of beauty parlors, hair treatments, hair dyes, permanent waving and such other treatments as might be practiced by the trade and all other subjects or matters that might arise from time to time in the trade in connection with service of the public.

Said respondent Charles Nessler further attempted to create and maintain for such society the appearance of a bona fide organization representative of the industry and trade, and devoted to the scientific development of methods, practices, and treatments generally of face, scalp, and hair, by causing to be formed ostensibly by such society, a so-called examination board, which, it was represented to the trade and public without disclosure of his connection therewith, would investigate the claims of manufacturers and merits of products or methods advertised or suggested by them, and of practices and methods from time to time introduced or followed in the trade. It was further represented, without disclosure of his connection with such representation, that such alleged society had, and would maintain a legal adviser, to report to it and procure actions against those who were or might be attempting to "foist inferior goods or treatment on their patrons."

Respondent Charles Nessler caused such alleged society to assume and continue the publication of his said periodical, the "Permanent Waver and Hair Dresser" under the trade name of "Hair and Beauty Science." In its first number as "Hair and Beauty Science," this publication contained, in announcement of its purpose, the following:

The Society for the Advancement of Hair and Beauty Science, 580 Fifth Avenue, New York, presents this, the first number of Hair and Beauty Science, the journal of the society, succeeding The Permanent Waver and Hairdresser, formerly published by Charles Nessler and now given by him to the society.

Unexpired subscriptions of the older journal will be served with the new publication.

In the larger opportunity, and speaking for the distinguished membership which sponsors the new magazine, Hair and Beauty Science, undertakes to interpret the newer policies and trends in scientific treatment of the hair and adornment of womankind, and in the advancement of the beauty profession in America.

The great growth of scientific hair treatment and beautification arts imposes new standards and leaders of the industry have combined their great resources for advancement, and the society now undertakes publication of the journal that its influence and inspiration may become more important than was previously possible.

It is the purpose of Hair and Beauty Science to point the way of tested improvement, to advance the cause of hygiene, and to raise the standards of service and of professional ethics.

In the year 1928, and during the months of January, March, April, and June, thereof, respondent Charles Nessler caused to be represented in advertisements in daily newspapers and trade journals having circulation in and among the various States of the United States, and in such publications "Hair and Beauty Science" organ of the Society for Advancement of Hair and Beauty Science, that a method had been discovered by which the human hair could be permanently waved without injury, but that the use of the instrument "text-o-meter" was necessary for such purpose, without disclosure of his responsibility for such representation or his connection with such machines, or that he owned, controlled, directed, and in effect was the Society for Advancement of Hair and Beauty Science. Respondent Charles Nessler further caused to be inserted in said publication "Hair and Beauty Science" the statement that numerous beauty parlor owners and employees were attempting to give permanent waves without the slightest qualification or examination, but that this would be changed as a result of examinations of hair operators or of those engaged in the operation of beauty parlors and hair dressing establishments conducted, and to be conducted by the society. He caused to be represented in such publication that every hair dresser who had passed the society's examination would use a hair "text-o-meter" to test the client's hair in advance, and that in his or her booth should appear the graduation certificate of the society; that such badges were bestowed and would be bestowed only on those found competent, and customers were advised to look for this badge. He caused to be represented in such publication that the "text-o-meter" manufactured, sold or leased by C. Nestle Co., had been examined, approved, and endorsed by said alleged society, and would be and was used by all hair dressers who had passed its examination, which, it was represented, would be and was based on a textbook written by respondent Charles Nessler without disclosing any information or notice that said respondent, the author of such so-called textbook, was the manufacturer of the instrument so endorsed by the society, or any information or notice that its membership was composed largely of his employees, and that it was his instrument or agency for extension of his business and exploitation of his apparatus.

PAR. 2. Respondent Nestle-Lemur Co. is a corporation organized under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the City of New York and State of New York. It was organized in the year 1928, by a consolidation of the Lemur Co., which had theretofore been engaged in the manufacture and sale in commerce among or between the various States of the United States, of supplies and equipment for use in so-called

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beauty parlors, and of C. Nestle Co. the said unincorporated concern owned and conducted as described in paragraph 1 hereof by respondent Charles Nessler, and respondent Nestle-Lemur Co. thereupon became and ever since has been the successor in business of the said Lemur Co. and of said Charles Nessler trading under the name and style of C. Nestle Co., and it now conducts the manufacturing and distributing business formerly conducted by the said Lemur Co. and the said Charles Nessler operating as C. Nestle Co., offering for sale and selling the products formerly sold by the Lemur Co. and C. Nestle Co., including the "text-o-meter" and other machines, instruments, appliances, and products for use in connection therewith, and transporting them from its place of business in New York City, N. Y., to purchasers in the various States of the United States, other than New York, in competition with individuals, partnerships and corporations similarly engaged in interstate commerce. Respondent Nestle-Lemur Co. has not had any control or direction over, or connection with the so-called Society for Advancement of Hair and Beauty Science, or with the organ "Hair and Beauty Science," or any of the advertisements or representations appearing in various publications, as from such so-called society.

PAR. 3. In truth and in fact the so-called Society for the Advancement of Hair and Beauty Science has not been, was not, and is not a bona fide independent and impartial society of hair dressers or beauty parlor operators, or of others concerned in the development and extension of improved or scientific methods and practices in the trade, or of disinterested individuals, but was composed of business associates, friends, employees, or others related in some manner or degree to respondent Charles Nessler, prior to the said consolidation of C. Nestle Co. and Lemur Co. and of employees of the Nestle-Lemur Co. since such consolidation. The expense of organizing, operating and maintaining the alleged Society for the Advancement of Hair and Beauty Science has been, and was, advanced by respondent Charles Nessler.

It has been and was the policy and practice of respondent Charles Nessler to cause to be accepted as eligible for approval by the society and for badges and certifications of competency, only those owning or operating the so-called "text-o-meter" machine, or intending, or contemplating purchase or operation of such machine. Such examinations as were conducted under the alleged auspices of said so-called society, necessarily resulted in the further and more extended use of the text-o-meter and other machines sold or leased by respondents Charles Nessler or the Nestle-Lemur Co.

In truth and in fact the said "text-o-meter" sold or leased by respondent Charles Nessler or respondent Nestle-Lemur Co. was

not, has not been, and is not necessary to effect the so-called permanent waving of the human hair or for any other proper or desirable treatment thereof. There have been, were and are machines, instruments, apparatuses, and devices offered for sale, sold or leased by competitors of respondents, suitable for and capable of efficient service in effecting such so-called permanent waves of the human hair without use of the text-o-meter to test it, for any other purpose or for any other treatment usual, necessary or desirable in, or associated in the public mind with so-called beauty-parlors or hair dressing establishments. No examinations, fair, impartial, or of any character were conducted or held by or under the auspices of said alleged Society for Advancement of Hair and Beauty Science, to ascertain the merits or the utility or efficiency of other machines, apparatuses, instruments or devices than those offered for sale or leased by respondent Charles Nessler, or to enable such alleged society to furnish fair and disinterested advice and suggestions to the trade and public. Such so-called examinations were no more than devices and methods by which to present the products of said respondent to the public falsely represented as supported by the unbiased judgment and impartial recommendation of a body of trained and experienced individuals, acting in the interest of the public.

PAR. 4. The aforesaid practices of respondent Charles Nessler under the name of C. Nestle Co. and as Society for the Advancement of Hair and Beauty Science have had, and each of them has had the capacity and tendency to mislead and deceive the public into the purchase or use of the product "text-o-meter" in the erroneous belief that it had or has been endorsed and recommended by an organization of disinterested individuals representing the trade as necessary to use for testing the hair preliminary to permanent waves and into the purchase or use of other machines, instruments, appliances, and products offered for sale by respondents, and thereby to divert trade from competitors of respondents selling their products by fair and truthful representations.

CONCLUSION

The acts and practices of respondent Charles Nessler described in the foregoing findings as to the facts, have been, and are all to the prejudice of the public and competitors of respondent, and have been, and are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents, Charles Nessler, an individual trading under the name and style of C. Nestle Co., and also under the name and style Society for the Advancement of Hair and Beauty Science, and Nestle-Lemur Co., a corporation, and Charles Nessler as an officer thereof, answers thereto, testimony and documentary evidence, briefs and arguments of counsel for the Commission and respondents and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that respondent Charles Nessler, an individual trading under the name and style C. Nestle Co. and also under the name and style Society for the Advancement of Hair and Beauty Science, has been violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is therefore ordered, That respondent Charles Nessler, his agents, servants, and employees cease and desist, in connection with offering for sale, or selling, in interstate commerce, the machine or apparatus text-o-meter or any other machine or apparatus, from representing in advertisements or by any other means, or causing to be represented in advertisements under the name of, Society for the Advancement of Hair and Beauty Science, that such machine or apparatus or any other machine or apparatus offered for sale or sold by him has been or is accepted, approved or recommended by the Society for the Advancement of Hair and Beauty Science, unless accompanied by the statement in apt and adequate words that such society is an organization formed, financed, controlled, and directed by him.

It is further ordered, That respondent shall within 60 days from and after service of this order file with the Commission a report in writing setting forth in detail the manner and form of his compliance with the order.

ORDER OF DISMISSAL

This matter coming on to be heard finally, on complaint, answer, testimony, documentary evidence, briefs and arguments of counsel for the Commission and for respondents, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and hereby is dismissed as to respondent the Nestle-Lemur Co., a corporation.

Syllabus

IN THE MATTER OF
LONG-BELL LUMBER COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1620. Complaint, May 23, 1929—Decision, June 8, 1931*

Where a corporation engaged in the manufacture and sale of lumber and timber products to customers in various sections of the United States, and in foreign countries, sold under the name "California white pine" products produced from the "Pinus ponderosa", and so advertised and described the same in trade journals, and other media of national circulation, and in other forms of advertising, circular letters, correspondence, and on letterheads, billheads, and invoices, and orally through its sales force, notwithstanding the fact that the tree belonged in the yellow pine, and not in the white pine, group as long established and recognized by botanists, wood technologists, foresters, and the public generally, and the wood therefrom, though frequently closely resembling true white pine in several of its immediately obvious qualities, and in several of its utilities, did not have those qualities of durability upon exposure, ease of working, ability to stay in place, uniformity, lightness, proportion of heartwood content, ability to retain paint, and others, which under the name "white pine" had come to be associated by the consuming public with the "Pinus strobus" or genuine northern white pine through a national and colonial experience of more than 200 years, and, more recently, with other species of the genuine white pine;

With result that a substantial number of retail dealers frequently sold said "ponderosa" lumber, purchased under such designations, upon orders for white pine, not knowing that the lumber so sold was not a true white pine nor wherein it differed therefrom, a substantial number of others, with knowledge of the important differences between the two, substituted said ponderosa, so trade named, for the higher priced, true white pine, the general public unknowingly frequently purchased ponderosa as and for true white pine and upon orders therefor, architects gave their approval to ponderosa products when true white pine and the qualities thereof were sought by buyer and architect, and such products were employed for uses for which less adapted than true white pine; and

With a tendency to bring about adoption of such ponderosa lumber for uses for which comparatively lacking in durability, and a lower public estimation of true white pine, and with effect of diverting trade from competitors selling true white pine products truthfully represented as such, and competitors selling ponderosa products under trade names neither including the phrase "white pine" nor otherwise deceptive or misleading, and of causing many retailers, architects, and consumers to buy said products as and for those of true white pine;

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

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Mr. Eugene W. Burr for the Commission.

Baker, Botts, Andrews & Wharton, of Kansas City, Mo., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the sale of logs and/or timber or lumber products and in the shipment of said timber or lumber or forest products to customers in other States in various sections of the United States, and in some instances in foreign countries, and with principal place of business in Weed, Siskiyou County, Calif., with misrepresenting product and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, names and designates in advertisements in trade journals and elsewhere, in circular letters, in correspondence with purchasers, and prospective purchasers and in invoices and orally through sales forces, as "white pine," with or without the prefix "California," "Arizona," "Western," or "New Mexico," a forest product produced from that species of tree native to the mountainous regions of the Pacific slope, commonly known as "western yellow pine," botanically known as *Pinus ponderosa*, marketed by manufacturers of the major part thereof in recent years as pondosa pine¹ and sold in competition with two species of genuine white pine, namely, *Pinus strobus*, the white pine native to the North Atlantic and Great Lake States, favorably known for its excellent qualities for over 250 years, and the *Pinus lambertiana*, native to the mountainous regions of the Pacific Coast States, commonly known throughout its range as sugar pine, and resembling in commercial qualities and characteristics the said *Pinus strobus* far more closely than the *Pinus ponderosa* or western yellow pine.

In so designating its products, respondent, and other manufacturers of said *Pinus ponderosa*, desire to distinguish the western

¹As set forth in the complaint, due to the confusion resulting from the designation by respondent and other manufacturers of the *Pinus ponderosa* as a white pine, "in or about the years 1924 and 1925 there was among various manufacturers of lumber an advocacy of, on the part of some, and an opposition on the part of others to, a proposal to change the trade name and designation of forest products made from *Pinus ponderosa* from 'white pine' or from the designations named * * * which include the words 'white pine,' to some other designation and particularly to 'pondosa' pine, and the said change to pondosa pine was actually made for all commercial purposes by manufacturers of the major part of the forest products made from *Pinus ponderosa*."

yellow pine, dealt in by them, from the longleaf yellow pine of the Southern States, commercially known as "southern yellow pine" (*Pinus palustris*), with its denser and more resinous characteristics, and inferiority, for certain uses, and, therefore, to avoid use of term "western yellow pine," and intend to secure for their products the market advantages of a name suggestive to the trade and public mind of the commercial species of genuine white pine, and particularly of the aforesaid more costly and favorably known, *Pinus strobus*, and cause the trade and buying public to minimize or ignore the characteristics wherein it said *Pinus ponderosa* is inferior to *Pinus strobus*.²

² The distinctive characteristics of the species of trees herein concerned both botanically and commercially, and facts pertaining to the history and sale thereof, are set forth in the complaint, as follows, in paragraphs 4 to 7, inclusive.

PARAGRAPH 4. There is a certain group of pine species known both popularly and botanically as "white" pines. They are species of the genus *Pinus*, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, soft wood in which the early and late formed portions of the annual rings or layers are not sharply defined, and have thin and nearly white sapwood. Another group of species of the genus *Pinus* is known both popularly and botanically as the "yellow pine" group, having certain botanical marks of distinction, and being characterized by rather hard, heavy wood, in which the early and late formed portions of the annual rings or layers are sharply defined.

PAR. 5. Among the species of pine belonging to the said described white-pine group is that botanically known as "*Pinus strobus*." It is a native to the upland regions of the North Atlantic Seaboard States and of the Great Lake States and other northern portions of the central valley of the United States. Since early colonial history, *Pinus strobus* has been known as a building wood, has proved its remarkable value during upwards of 250 years of general use, and has gained universal esteem under the common designation of "white pine." *Pinus strobus* is a genuine white pine and is the best known of the said white-pine group. The approximate present annual production and sale in the United States on the part of the manufacturers of forest products made from *Pinus strobus* is 825,000,000 feet b. m., and that of *Pinus ponderosa* 2,746,000,000 feet. Of the said annual production and sale of *Pinus ponderosa*, approximately an aggregate of 1,668,000,000 feet is now annually sold under the trade name and designation of "ponderosa" or "Ponderosa pine" and the remaining portion only, or approximately 1,078,000,000 feet, is sold as "white pine" either with or without one or another of the designations mentioned in paragraph 3 which include the said words "white pine." To persons not skilled in the identification and distinction of various species of forest products, it is at times difficult to distinguish between forest products made from *Pinus strobus* and those made from *Pinus ponderosa*.

PAR. 6. The wood of *Pinus strobus* is strongly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay and by its exceptionally high degree of uniformity of quality both locally and throughout its range and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said *Pinus strobus* excels *Pinus ponderosa*. The latter, while varying in its commercial characteristics in various portions of its range, among individual specimens within given localities, and also in many instances between heartwood and sapwood of individual specimens of the species, is botanically, by common designation, and by the average commercial qualities and characteristics of the species, a member of the aforesaid yellow-pine group. By reason of the said described comparative characteristics and excellence forest products made from the *Pinus strobus* have a general tendency in lumber markets to command and in general have commanded a higher average f. o. b. mill price than forest products made from *Pinus ponderosa*.

PAR. 7. There is a species of pine, native to the mountainous regions of the Pacific Coast States, designated botanically as *Pinus lambertiana*, known universally throughout its range under the common name "sugar pine." The products made from *Pinus lam-*

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The use of the words "white pine," as alleged, "whether or not coupled with any one of the said words in paragraph 3 hereof, named has the capacity and the direct tendency to result and has resulted in a widespread misconception of the comparative qualities, characteristics, commercial values, and even the identity of forest products made from *Pinus ponderosa* on the one hand and from species of genuine white pine on the other, and has actually confused the minds of many of the trade and of ultimate consumers and has misled and deceived them as to the actual and true comparative values of forest products made from the said species. The said use of the aforesaid words has the capacity and a direct tendency to produce and in many instances has produced numerous results unfair to competitors and to the public and, among other such, the results described as follows, to wit:

"(a) Spurious market equality in both the trade and public estimation in certain instances has been given to forest products made from *Pinus ponderosa* with those made from genuine white pines for uses wherein genuine white pines excel *Pinus ponderosa* as herein in paragraphs 6 and 7 set forth.

"(b) There has been brought about public doubt and misapprehension as to the respective qualities of forest products made from various species of pine native to the Pacific Coast and the uses which may most advantageously be made of them to the loss and detriment of the public and of competitors of respondents. The reputation and public esteem of forest products made from *Pinus lambertiana* have been seriously impaired as regards the qualities in which said *Pinus lambertiana* surpasses *Pinus ponderosa* as set forth in paragraphs 6 and 7 hereinabove. Many buyers and prospective buyers, as a result of the aforesaid misnaming of *Pinus ponderosa* as and for white pine and as a result of their ensuing experience therewith, have come to the mistaken and erroneous belief that none of the Pacific Coast species of pine possesses qualities equal to or approaching those described in paragraph 6 hereof as the qualities for which *Pinus strobus* has long been noted.

"(c) Jobbers and retailers in many instances have been and still are misled into buying *Pinus ponderosa* in the belief that they thus

bertiana are likewise known and sold widely as sugar-pine products, and are in competition with products made from *pinus ponderosa*. *Pinus lambertiana* is a genuine white pine. It is far more nearly related to the said *Pinus strobus* than *Pinus ponderosa* both botanically and in commercial qualities and characteristics, as set forth in paragraph 6 hereinabove. It equals *Pinus strobus* in its average rating in the said described characteristics. The approximate annual production and sale of *Pinus lambertiana* is 282,000,000 feet b. m.

* "New Mexico," "California," as prefixes.

secure a genuine white pine having the aforesaid qualities and characteristics thereof in the comparatively high degree described in paragraph 6, and have been and are thus induced to buy forest products made from *Pinus ponderosa* for resale for purposes to which they are as an average comparatively ill adapted.

“(d) Such retailers as have known the distinction between forest products made from *Pinus ponderosa* and those made from genuine white pines, but who have desired to gain by substitution of *Pinus ponderosa* for genuine white pine products in their sales to customers, have been enabled to mislead and have been aided in misleading their customers into the belief that *Pinus ponderosa* was a genuine white pine with the same excellent qualities possessed by genuine white pines and in the same high degree, as in paragraphs 6 and 7 set forth, and have filled orders for genuine white pine with *ponderosa* pine.

“(e) Such retailers as have been in ignorance of the distinction in qualities and characteristics between *Pinus ponderosa* and genuine white pines have been caused to sell to the public forest products made from *Pinus ponderosa* as and for genuine white pine to consumers desiring the qualities of lumber made from genuine white pine.

“(f) Retail dealers having stocked their yards with *Pinus ponderosa* purchased and to be sold by them as and for genuine white pine in various instances have not desired and do not desire to stock their yards with forest products made from said genuine white pine, thus depriving manufacturers of genuine white pine products of numerous market outlets.

“(g) Numerous builders, contractors, architects, and ultimate consumers have been and are misled into the advocacy, recommendation, adoption, and use of *Pinus ponderosa* in the belief that it is genuine white pine and has the aforesaid high degree of said described qualities.

“(h) Respondents and other manufacturers by misnaming and misdescribing *Pinus ponderosa* as a genuine white pine have been enabled on numerous occasions and now are enabled to secure a higher price for their said forest products than they could secure therefor in competition with genuine white pine products if a true name and designation of their said products were used; and have been enabled to fill and have actually filled orders for genuine white pine with consignments of *ponderosa* pine.

“(i) Manufacturers of forest products made from said genuine white pine, frequently through the ignorance of the buyer or of the public as to the commercial qualities distinguishing genuine

white pine from *Pinus ponderosa*, are unable to sell their said products to customers at a higher price than customers will pay for forest products made from *Pinus ponderosa* when the latter are misnamed and misdescribed as white pine.

“(j) The average f. o. b. mill cost of forest products made from said genuine species of white pine exceeds the average f. o. b. mill cost of forest products made from *Pinus ponderosa* and the said misdescription of *Pinus ponderosa* as white pine has a direct tendency to cause and has at times caused manufacturers of genuine white pine products to lose sales and has at times caused them to make sales at or below actual cost of production and distribution.

“(k) Manufacturers of forest products made from *Pinus ponderosa* who describe their products as *pondosa* pine, as hereinabove in paragraph 8 described, are at a sales disadvantage as contrasted with such competitors, respondents and others, as misname and misdescribe their products, likewise made from *Pinus ponderosa*, as white pine, and who wrongfully imply and at times declare that their products possess the aforesaid superior commercial qualities for various uses that are possessed by genuine white pine.

“(l) The employment of *Pinus ponderosa* in lieu of genuine white pine by builders, contractors, architects, and the general public for uses wherein it is exposed to decay, and for which genuine white pine, by virtue of its aforesaid greater durability was and is preferred and desired in contrast with *Pinus ponderosa*, has conduced to and resulted in and still conduces to and results in the waste of forest products through the necessity to replace *Pinus ponderosa* more frequently than replacements would be or would have been necessary had white pine been used in the first instance.

“Aforesaid practices and methods of competition,” as charged, “engaged in by respondents, as hereinabove set forth, have the capacity and a direct, substantial and dangerous tendency to mislead and deceive the trade and public with regard to the identity and the comparative qualities and values of said above described forest products and have actually so misled and deceived in such regard. The said practices and methods of competition of respondents are against the public interest and constitute unfair methods of competition in commerce between the States and with foreign nations in violation of section 5.”

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal

Trade Commission on May 23, 1929, issued and served a complaint upon the respondent above named charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The complaint herein is one of a group of 50 complaints (Dockets 1620 to 1669, both inclusive) issued by the Commission against corporations, partnerships, and individuals charging the use of one or more trade terms inclusive of the phrase "white pine" to designate lumber, logs, and other forest products, manufactured and sold in interstate commerce from the pine species hereinafter described, known as *Pinus ponderosa*.

Respondent appeared and filed an answer. Thereafter this group of 50 cases, by mutual consent, in the interest of economy and for the avoidance of a multiplicity of hearings, was tried as a consolidated proceeding. Hearings were had and evidence was introduced both in support of the complaints and in defense before an examiner of the Federal Trade Commission, duly appointed, beginning October 4, 1929, at Boston, continuing at New York, Detroit, Indianapolis, Chicago, Madison, Wis., Spokane, Portland, Oreg., San Francisco, Albuquerque, N. Mex., and Flagstaff, Ariz., and closing at Chicago on February 20, 1930. All of the evidence was recorded, duly certified and transmitted to the Commission.

Thereafter, this proceeding came on for final hearing and the Commission having duly considered the pleadings and all the evidence taken herein and the record herein and being fully advised in the premises, makes this its report, stating its finding as to the facts and its conclusion drawn therefrom:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is incorporated under the laws of the State of Missouri and has its principal place of business in Kansas City, Mo.

I. RESPONDENT USES NOMENCLATURE WHICH INCLUDES THE PHRASE "WHITE PINE" FOR ITS PINUS PONDEROSA PRODUCTS IN INTERSTATE TRADE

PAR. 2. The respondent is incorporated under the laws of the lumber and timber products and ships said products from the State of manufacture to customers located in other States in various sections of the United States and in some instances located in various foreign countries. In causing its said products to be sold and transported from one State to another and from this country to foreign countries, respondent is in competition with other corporations, partnerships, and individuals producing forest products and selling and transporting the same from one State of the United States to another and to certain foreign countries.

PAR. 3. Respondent in the course and conduct of its business, as described in paragraph 2 hereof, for more than five years last past, has manufactured and sold, and now manufactures and sells, among other products, forest products produced from that certain species of tree botanically designated "Pinus ponderosa" under the name of "California white pine"; and during said period of time respondent, in advertisements inserted in trade journals and other media of national circulation, together with other forms of advertising, circular letters, correspondence with purchasers and prospective purchasers thereof and on letterheads, billheads, and invoices and orally through its sales forces, has designated and described such forest products made from Pinus ponderosa as California white pine.

II. GROUPING OF PINE SPECIES

PAR. 4. Pine trees, the genus Pinus, have for a long period been divided by botanists, wood technologists, foresters, and the public generally into two groups, namely the "white pine" and the "yellow pine" groups.

PAR. 5. In the classification of conifers including the pines, in so far as it is of purely botanical character, the number and grouping of needles, the nature of the cones, and the character of the bark are the primary considerations. The qualities and uses of the lumber produced by the trees classified are not considered for such botanical classification and the botanical classification of species of trees into a

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given genus does not always bring together a group of species producing lumber of closely related qualities and uses. After the above mentioned botanical and practical grouping of the pines had been made, a microscopic study and classification of the cellular structure of the pines revealed that pine species belong to two distinct groups as regards their cell structure and that the division on microscopic bases is identical with the botanical and practical classification into the "white pine" and the "yellow pine" groups.

PAR. 6. The microscopic distinction in cell structure between the members of the white pine group on the one hand and the members of the yellow pine group on the other, bears no known casual relation to the practical qualities of the lumber produced by the various pine species. The utilities of lumber have been learned by experience.

PAR. 7. Experts are able to determine microscopically whether a fragment of wood came from one of the white pines or from a yellow pine. They are not able thus to ascertain whether a given piece of white pine lumber was taken from a tree of one or another species of white pine and conversely they can not be sure of the species of any given piece of yellow pine. In large quantities experts and experienced lumbermen would in most instances be able to state with fair degree of certainty by what species of pine the lumber was produced. In the forest there is generally no uncertainty in distinguishing the species by differences in the bark and in the cones and by the presence of five needles in each bundle in white pines—the yellow pines having a less number.

III. CHARACTERISTICS OF THE WHITE PINE GROUP

PAR. 8. The white pine group includes, by common consent, the following commercial species of interest herein:

(a) The Northern white pine, known also by various other trade names, all of which include the phrase "white pine," botanically known as *Pinus strobus*;

(b) Sugar pine, botanically known as *Pinus lambertiana*; and

(c) Idaho white pine, known botanically as *Pinus monticola*.

These are the leading commercial species. The word "white" as part of the common name given to the members of the white pine group is not in origin descriptive of the outward appearance of these trees in the forest but of the lumber made therefrom.

PAR. 9. The white pine group has (a) a high degree of uniformity of lumber qualities as a group and is (b) preeminent for its high average of the following lumber characteristics:

Durability under exposure to weather and to other conditions of moisture, a great proportion of heartwood content as contrasted

with sapwood content, lightness of color, lightness in weight, softness and evenness of texture, closeness and fineness of grain, freedom from resinous content, from shrinkage, "checking" (i. e., the forming of minute fissures in the grain of the wood) and warping. Consequently the white pines have great ability to stay in place, exceptional ease of working and exceptional ability to hold nails without splitting when driven close to the end or edge of any given piece of lumber, and also to receive and retain paint.

IV. CHARACTERISTICS OF THE YELLOW PINE GROUP

PAR. 10. The species of the yellow pine group are in general and as an average far harder, heavier, stronger, more subject to shrinkage and warping, darker in color, more resinous, denser in fibre and coarser and more difficult to work than any of the members of the white pine group. The typical species of the yellow pine group are valuable for purposes where structural strength of timber is required whereas the species of the white pine group are not adapted to heavy construction.

PAR. 11. In contrast with the white pines the yellow pines vary widely. The most typical and commercially important of the latter is the long-leaf yellow pine (*Pinus palustris*) of the Southern States. From this species, the hardest of the group, the yellow pines vary to *Pinus ponderosa* which produces the softest lumber of any of the group. The characteristics of *Pinus ponderosa* lumber are set forth in Section X below. The typical yellow pines of the South do not produce lumber in "shop" grades (see par. 49) to any marked extent.

V. NORTHERN WHITE PINE

PAR. 12. The white pine known over far the longest period and most widely is *Pinus strobus*. It is native to the Northeastern States and westward to the Great Lake region including Minnesota, together with great sections of the eastern Canadian provinces. Its range extends also along the Appalachian highlands into the Southeastern States.

PAR. 13. This lumber is often referred to merely as "White pine." Of its other names the commonest is "Northern white pine." It is also given various designations including "New England white pine," "Maine white pine," "Michigan white pine," "Michigan cork pine," "Wisconsin white pine," "Minnesota white pine," "Canadian white pine," "New Brunswick white pine," among others.

Present production

PAR. 14. American production of white pine was formerly immense. As the virgin stands of the species became depleted in eastern sections, supplies from further north and west came into use and additional virgin stands were from time to time depleted.

PAR. 15. While some virgin Northern white pine remains in New York State and elsewhere, there remain only small areas in the United States outside of Minnesota. In the latter State the virgin stands are still extensive and of high quality.

History

PAR. 16. White pine lumber was the almost universal building material of the settlers of New England from the earliest days. From this section, moreover, it was marketed throughout the country as settlement developed and became and remained for generations the leading soft wood of the country. Many ancient buildings constructed from this lumber, 1636 to 1780, are still in use and are in a high state of preservation. Among these are certain famous buildings including Christ Church in Cambridge, the Longfellow house, the James Russell Lowell house, the Fairbanks house, among others. In numerous cases the original shingles or clapboarding are still exposed to the New England climate. In certain instances the white pine lumber was not protected by paint and is still in a good state of preservation.

Qualities and reputation

PAR. 17. White pine lumber from adult growth possesses precisely the qualities enumerated, as characteristics of the white pine group, in paragraph 9 hereof. It has long held and still holds an exalted reputation among the consuming public for the said enumerated qualities and in general esteem is the highest type of lumber as respects the excellences desired in softwood materials. These views of white pine are widely shared by the consumers, builders, dealers, architects, millwork manufacturers, and professional foresters and technologists. This species is coming more and more to be a specialty wood, largely devoted to special purposes, as it becomes scarcer and higher in price. It is in great demand.

Commercial future of the species

PAR. 18. The importance of white pine is enhanced by reforestation efforts by the National Government, State governments and by private persons. Great areas have been planted in many parts of the country.

VI. MEANING ATTACHED TO "WHITE PINE" BY THE PUBLIC

PAR. 19. As a result primarily of the aforesaid high qualities and reputation, the long continued and the widespread use of white pine lumber under numerous trade names, above mentioned, which include the phrase "white pine," the public long ago came to associate and still associates with the phrase "white pine" the said qualities above in paragraph 9 described.

VII. SUGAR PINE

PAR. 20. Sugar pine (*Pinus lambertiana*), the second species of the commercial white pines (supra par. 8), is native to upland regions of California, southern Oregon, and small parts of Nevada.

PAR. 21. The lumber of this species has uniformly been sold as "sugar pine." Its producers advertise it, and otherwise promote its sale, as a genuine white pine, with the qualities of true white pines. It has been in the market of the country widely for about 30 years and has an annual production of about 280,000,000 feet.

PAR. 22. Sugar pine lumber is preponderantly a heartwood and has in high degree the qualities typical of the true white pines outlined in paragraph 9 hereof. This species is closely akin as a tree and as lumber to white pine.

PAR. 23. Sugar pine has a high reputation for durability, particularly when exposed to the weather or to other processes of wetting and drying and in actual use has endured exposure for long periods. Original lumber made from sugar pine is still in place where exposed to the weather and is in good condition after many years used in numerous instances. This is true occasionally even where the wood has been left unpainted. This species is highly valued for exterior uses. Sugar pine is the most largely used and most highly valued of any species for industrial patterns on account of its exceptionally high degree of softness, uniformity of texture, the large dimensions in which it is obtainable, its freedom from warping, checking, and shrinkage and its consequent exceptional ability to stay in form. For similar reasons it is highly valued for interior woodwork of pianos and organs. There is a tendency for sugar pine to become a specialty wood.

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VIII. IDAHO WHITE PINE

PAR. 24. Idaho white pine (*Pinus monticola*), the third species of commercial white pines, is indigenous to the mountainous sections of northern Idaho, Washington, and Oregon, western Montana and portions of British Columbia. Northern white pine and Idaho white pine resemble one another closely.

PAR. 25. Lumber cut from this species is characterized by the qualities of the true white pine described in paragraph 9 hereof. Idaho white pine has come into general use only within about 20 years; it has shown excellent durability under weather exposure. It has an excellent reputation for durability, and is recognized as a true white pine.

IX. PINUS PONDEROSA

PAR. 26. Having described the commercial species of true white pine, we turn now to *Pinus ponderosa*, the lumber designated by respondent and numerous other producers by names which include the phrase "white pine." The term "ponderosa" is not used in the trade but is employed herein for convenience. Ponderosa is fully recognized as belonging, both by botanical classification and its cellular character to the yellow pine group.

PAR. 27. This species has a range extending over a wide area from British Columbia to the northern states of Mexico and from the Pacific Coast States to the mountainous sections of Montana, Colorado, and New Mexico. Ponderosa averages a larger growth than Northern white pine or Idaho white pine but is smaller than the Sugar pine. This tree is readily distinguishable from true white pines by its bark, cones, and the number of its needles to each sheath. It is given the designation "Western yellow pine" by the United States Forest Service. It is generally known by the residents of its home regions and by loggers merely as "yellow pine."

PAR. 28. The annual production of *Pinus ponderosa* is 2,800,000,000 feet, b. m., while that of true white pine is 1,600,000,000 feet.

Trade terms for ponderosa

PAR. 29. The lumber from this species has been given the names in controversy in the above described group of cases (see p. 2) by respondent and various other producers, to wit, California white pine, New Mexico white pine, and Arizona white pine. Ponderosa lumber, by many of the producers in the so-called "Inland Empire" (i. e., eastern Washington and Oregon, Idaho and Western Montana), was formerly given the name "Western white pine," which,

however, was abandoned by these producers (see *infra*, par. 33) and the term "Pondosa pine" adopted for their ponderosa products. The term "Western white pine" is now used only by a few producers in Arizona and New Mexico and as an alternate term only. The ponderosa producers using the terms in controversy, in contrast with the retailers, have almost always refrained from advertising, invoicing or selling this lumber as "white pine" without prefixing one or another of the said geographical terms. Occasionally, however, the term "white pine" has been used alone by the producers. Nor have these producers supported their designation of ponderosa products by terms which include the phrase "white pine" by express declarations to their customers that said products are true white pine.

Origin and extent of terms, which include "white pine," for ponderosa

PAR. 30. Ponderosa lumber came to be given terms which include the phrase "white pine" for local markets in California, New Mexico, and Arizona about 1880. By 1886 it was being generally marketed under terms including "white pine" in California, Nevada, and Utah points with occasional shipments further east. By about 1900 it was coming into middle western territories and about 1915 ponderosa completed its national distribution by entering New England in a limited way. (But see par. 74 *infra*.)

PAR. 31. But as ponderosa lumber gradually spread eastward it came into competition more and more with true white pine in markets long occupied by true white pine. Accordingly, ponderosa producers came to value the use of trade terms which include "white pine" for ponderosa products, and they now desire to continue such use, since these trade terms classify and associate ponderosa in the market with the true white pines and afford producers of ponderosa a substantial monetary sales advantage.

PAR. 32. Terms for ponderosa which include the phrase "white pine" are now in use by almost every producer from and including the Klamath section of southern Oregon, California, Nevada, Arizona, and New Mexico. In the last two named States, however, these terms were partially dropped before these proceedings began.

More than half of ponderosa output is no longer sold under "white pine" trade terms

PAR. 33. The ponderosa of the "Inland Empire" did not enter midwestern and eastern markets as early as the more southerly supplies. When it did it was under various terms of which western

white pine was most employed (see supra par. 29). In 1924 the majority of "Inland Empire" producers of ponderosa adopted the name "Pondosa pine" and abandoned all other terms for this lumber. The same term is used by a very few California producers whose chief product is Sugar pine. Pondosa pine is the term employed for ponderosa by the representatives of the producers of slightly more than half of the ponderosa marketed. Certain Arizona and New Mexico producers use it as an alternative term. Pondosa pine is used for the same purposes as before the change of name, but whether in the same proportions the record does not reveal. It is used in general for the same purposes as such ponderosa as is marketed under terms which include the phrase "white pine" but not in the same proportions.

X. COMPARISON BETWEEN TRUE WHITE PINE AND PONDEROSA LUMBER

PAR. 34. The importance to the buyer of the confusion, hereinafter found, is due in large measure to certain differences between the lumber of the genuine white pines and that made from *Pinus ponderosa*. Report on those distinctions next ensues:

A. *Variability of qualities*

PAR. 35. The ponderosa species grows readily under an unusual variety of conditions of soil, drainage, temperature, latitude, altitude and of high precipitation or semiaridity. The true white pines are far more restricted and more exacting in their requirements in the foregoing respects. They do not thrive under conditions so widely varying.

PAR. 36. Correspondingly ponderosa has a high degree of variability in characteristics as lumber. Ponderosa products from different parts of California vary widely, some sections producing light colored wood of soft texture, while in other districts the product is far harder, darker, heavier, and denser. The ponderosa of the "Inland Empire" is a smaller tree as an average and produces lumber differing in some respects, including the average character of its knots. "Inland Empire" ponderosa also presents varied lumber characteristics. The higher elevations of Arizona and New Mexico produce soft, pale types of ponderosa, varying in color and texture from California types. These variations in ponderosa lumber are far greater than the variations in the species of true white pine.

PAR. 37. There are also greater variations in given individual localities in the same stand of ponderosa than in the corresponding stands of the genuine white pines.

PAR. 38. Moreover, in the same tree and in the same piece of lumber there are greater average variations in the softness, ease of working, appearance and color of ponderosa than in the case of true white pines. These latter variations are of two kinds: There is a greater variation in general between the spring and summer portions of the annual rings of ponderosa than in the white pines. The texture of the white pines is more uniformly smooth and relatively unbroken by differences in characteristics between the two portions of each annual ring, while in the case of the average ponderosa there is a greater hardness of the summer growth of the tree as contrasted with the spring growth.

PAR. 39. Further and more notably there is a greater difference in ponderosa than in the true white pines between the color, texture, density, weight, and resinous content of the heartwood and of the sapwood. As an average the heartwood of ponderosa is notably darker, heavier, and more resinous than either the sapwood of the same tree or the heartwood of genuine white pines.

PAR. 40. True white pine lumber is far more durable than ponderosa lumber, especially when exposed to weather conditions. The ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber. It has a far greater percentage of sapwood than the true white pines. The sapwood of the ponderosa is less durable than any other part of the tree—especially when exposed to weather conditions. It is the sapwood of the ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness. It is the sapwood of the ponderosa that is usually sold for uses and purposes for which the heartwood of the true white pines is celebrated. The close resemblance between the heartwood of the true white pines and the sapwood of the ponderosa above noted, is one of the greatest causes of the confusion and deception in the marketing of the two species.

PAR. 41. Accordingly, an order for ponderosa lumber may be correctly filled by material having a considerably greater diversity of characteristics than an order for true white pine. Furthermore, if orders for white pine (see par. 62) are interpreted by the dealer to permit the delivery, not only of true white pine, but also of ponderosa purchased by him under names which include the phrase "white pine" (see pars. 65-69), there is far more risk of the buyer receiving lumber either of characteristics differing from those desired or of

characteristics widely varying within the consignment, than in the case of an order for white pine when interpreted so as to require true white pine exclusively.

B. Comparison of the so-called mechanical properties

PAR. 42. The findings as to mechanical properties made under above heading exclude the comparative variability of the lumber produced by the species in question, the respective proportions of their heartwood and sapwood content and the relative durability of the species compared. In mechanical properties, so restricted in meaning, ponderosa is found as an average to compare with the true white pine as follows:

PAR. 43. The genuine white pines distinctly excel ponderosa in freedom from shrinkage and checking (i. e., the formation of minute fissures). Checking is a partial cause of the warping and twisting of lumber and conduces to decay. It also promotes a more frequent failure of ponderosa lumber to stay in place.

PAR. 44. Genuine white pines as an average excel ponderosa in softness of texture, freedom from resinous content, in paleness of color and lightness of weight, ease of working and ability to hold nails close to the edge or end of the lumber. The white pines also as an average excel ponderosa as regards their ability to hold paint.

C. Comparative proportions of heartwood and sapwood

PAR. 45. Growing timber is divided into the heartwood and the sapwood portions, the heartwood of trees in general, including the four pine species hereinabove described, constituting that portion of the product which possesses the greater durability where exposed to weather conditions or in other ways to moisture.

PAR. 46. The proportion of heartwood has an important bearing here. The sapwood of none of the varieties here in question has a long life where exposed to conditions inducing decay. (But see par. 57.)

PAR. 47. Ponderosa has a far less proportion of heartwood than each of the true white pines.

Importance of the proportion of heartwood for remanufacturing purposes

PAR. 48. The difference between the proportions of the heartwood to the sapwood content in ponderosa and in the true white pines is important in the remanufacture of the lumber into millwork products and in the utility of the products.

PAR. 49. In sawing the tree into lumber the preliminary process is "slabbing." Thereby a far greater proportion of the sapwood content of the average true white pine log is removed than of the sapwood content of the average ponderosa log. The lumber thereafter first taken constitutes in high proportion what is sold as the "select" grades of lumber both in the white pines and in ponderosa. These grades consist to a substantially larger extent of heartwood in true white pines than in ponderosa. Proceeding further into the log more knotty portions are encountered. These are used as the "shop grades" for remanufacturing into both inside and outside finish. In true white pine these shop grades consist of heartwood to a much larger extent than is the case in ponderosa shop lumber.

PAR. 50. For this reason manufacturers of outside finish from true white pine can and some of them actually do so mill the lumber as to turn the sapwood portions toward the inside and to present a complete heartwood surface to the weather. This it is not possible to do with ponderosa shop lumber since the sapwood content is too great.

PAR. 51. Still further in the interior the great number of knots unfit the lumber for shop use and it is used as common lumber. In the common grades ponderosa and true white pine are sometimes sold together as pine common.

PAR. 52. The heartwood content constitutes the typical lumber of true white pine. But in ponderosa the heartwood content is much smaller in percentage, as an average, and is harder, heavier, darker, denser, and more resinous than the sapwood of ponderosa or either the heartwood or sapwood of true white pine. Accordingly, ponderosa heartwood is not as an average highly adapted in amount, appearance, and texture to compete with true white-pine lumber.

D. Comparative durability under weather exposure

PAR. 53. Climatic conditions of moisture, precipitation, and humidity have a direct effect upon the durability of exposed lumber. Other things being equal, the greater the exposure to moisture the greater tendency of any given species to decay.

PAR. 54. The reputation of ponderosa for durability, and its actual durability, in uses where exposed to the elements is far below that of the true white pines in general. Ponderosa is not sought by buyers for its durability for exterior uses. It is not recommended for such purposes by architects. While the U. S. Forest Service has conducted no investigations of the comparative durability of lumber which have resulted in dependable data, that bureau, in common with

experts generally, deems ponderosa to have notably lower durability under weather exposure than true white pine. This is also asserted by practical lumbermen generally.

PAR. 55. Said low comparative standing of ponderosa as to durability results from experience with it in various parts of the country and the contrasting experience with the true white pines, and over the far longest period, with Northern white pine. Ponderosa has failed to endure in exterior uses under conditions of high precipitation and humidity in various sections east of the Mississippi River. It has become unserviceable through decay in about seven years in various cases. Prompt painting has not always prevented the decay of ponderosa.

PAR. 56. In some sections of California there are houses constructed of ponderosa of many years standing. Although still serviceable the exterior of these has rotted to considerable extent and the "shakes" have rotted badly. California users and architects prefer sugar pine to ponderosa for exterior use because experience has shown that sugar pine endures longer. In the arid regions of the southwest, ponderosa has a record of centuries of use in structures made by the Spanish and Mexican settlers, but even in that section the long life experienced as regards this lumber is where not exposed to the weather. Rotting has occurred in this section where there was weather exposure.

PAR. 57. Where sugar pine and ponderosa have been compared as to durability of standing dead timber, in stumps of cut timber and in dead and down logs, in the same localities and under similar conditions, the ponderosa has decayed and become wholly unmarketable after periods of one to four years, while sugar pine has endured for many years. A comparison of dams, each subject to daily depletion and replenishment of the supply of water, built of ponderosa and of sugar pine, respectively, showed a life of about two years in the case of the former material and about 39 years for the sugar pine. The sapwood of sugar pine outlasts the sapwood of ponderosa and the heartwood of the white pines outlasts that of ponderosa.

XI. UTILITIES OF PONDEROSA LUMBER

PAR. 58. Ponderosa lumber as an average resembles true white pine in appearance and general texture and it competes actively with true white pine in many markets and for many purposes for which true white pine has long been used.

PAR. 59. Ponderosa is excellent for many uses and has sold and continues to be sold in great quantities upon its merits. It has fine

characteristics as inside finish for which it is widely used on account of its lower market price. Another reason for preferring it over true white pine for interior use is that numerous architects, members of the trade and consumers desire the ponderosa type of grain. Ponderosa is distinctly inferior, however, to true white pine lumber, for reasons set forth hereinabove, for outside uses including exterior trim (paragraphs 53 to 57), and for numerous purposes requiring the acme of characteristics enumerated hereinabove in paragraphs 9 and 23. The true white pines do not supply enough of the shop grades to make all of the exterior millwork normally needed by the building trade.

**XII. EXTENT OF CONFUSION THROUGH THE USE OF TRADE TERMS INCLUDING
"WHITE PINE" FOR PONDEROSA**

A. Market conditions

PAR. 60. As the eastern stocks of virgin Northern white pine diminished, Michigan and Wisconsin white pines came into the market. As these stocks in turn diminished, Minnesota and Canadian white pines have come increasingly into the market. All of these were of the Northern white pine or strobis species. Idaho white pine and sugar pine also advanced with the recession of the supply of Northern white pine, entering the markets in a gradual eastern progress. The character and qualities of each of these species possess and, were presented to the trade and public as those of a true white pine. Ponderosa, under names which included the phrase "white pine," entered the same markets during the same general period.

PAR. 61. Throughout the competitive relations among the white pines and between them and ponderosa there has, with practical uniformity, existed a price differential in favor of each of the true white pines. The white pines have maintained and still maintain a higher price than ponderosa products.

PAR. 62. The character and reputation of true white pine as above set forth (pars. 9, 17, 19, 22, 23, 25) have led the general public, builders, architects, and the trade over a long period to call for and specify white pine, and this demand continues to the present time. The dealers, architects, and consuming public are influenced by the common names given to lumber products and not by the botanical names. They seldom know the Latin terms for the respective species although of late there has been a tendency on the part of certain architects to use strobis in their specifications of Northern white pine. Nor are these classes of buyers informed of or concerned over the purely botanical distinctions considered by scientists in the classi-

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fication of species. They buy by common names and are concerned over distinctions between the characteristics of the lumber of the various species.

PAR. 63. The general public associates certain qualities as above found (par. 19) with the term "white pine," but does not have sufficient knowledge of lumber species to be able to distinguish by appearance between the true white pines and ponderosa. Even experienced retailers can not always be certain as to whether lumber is ponderosa or true white pine, and architects, as a class, do not have the special technical knowledge required for them to distinguish between the two. This is true of the lighter and softer types of ponderosa and particularly of its sapwood lumber.

B. Extent of the resulting confusion to wholesalers and remanufacturers

PAR. 64. Some wholesale lumber merchants and millwork concerns are apprised of the fact that ponderosa products, in the market under terms which include the phrase "white pine," are not true white pine products, but they have little opportunity to inform themselves directly as to comparative durability.

C. Extent of resulting confusion to retail dealers

PAR. 65. Some retailers of lumber know the species and quality distinctions among these varieties of pine lumber, and of this number a portion make it their practice to deliver genuine white pine upon orders for white pine. The various terms which include the phrase "white pine" for ponderosa are thoroughly familiar to the retail trade as well as the appearance of the lumber they receive under said terms, but many retailers do not know whether ponderosa products sold under said terms are true white pine products or not. Some retailers believe them to be genuine white pine products. Ponderosa under names which include the phrase "white pine" is sold by many retailers upon orders for white pine. Numerous dealers in various parts of the country do not distinguish between ponderosa so named and true white pine lumber in their respective qualities and utilities. Many dealers sell ponderosa and the genuine white pines on orders for white pine according to the stocks they may chance to have on hand. The use of the phrase "white pine" as part of terms for ponderosa is confusing to and misleads a substantial portion of the retail lumber trade.

D. The use of the phrase "white pine" by distributors of ponderosa as an aid to dealers to mislead consumers

PAR. 66. The practice by retailers of selling ponderosa, when designated by a term which includes the phrase "white pine" on orders for white pine is not confined to dealers who do not know the distinctions of quality between ponderosa so named and true white pine. Dealers who know that white pine excels ponderosa in important respects frequently sell either product to fill orders for white pine according to their own interest or the exigencies of their yards.

PAR. 67. Some dealers who know that ponderosa products purchased under trade terms which include the phrase "white pine" are not genuine white pine prefer to stock their yards with such ponderosa as comes to them so named, rather than with ponderosa otherwise named, on account of the sales value which the word "white" so used possesses. Some retailers feel justified or safer in selling ponderosa products on orders for white pine on account of the inclusion of the phrase "white pine" in the term under which they purchase.

PAR. 68. When an order comes for white pine dealers sometimes make an effort to learn to what use the lumber is to be put and supply ponderosa, or true white pine, accordingly. Others make no such effort. Dealers, however, quite generally omit to pass to their customers the information that ponderosa is not a true white pine. Even ponderosa sold to the retailer under the trade term "pondosa pine" is sometimes sold to the consumer on orders for white pine. The latter sales are aided and made more frequent by the fact that pondosa lumber is cut from the same tree as ponderosa lumber sold under names which include white pine, and by the further fact that representatives of pondosa producers, meeting in competition the salesmen of ponderosa, offered under said names, urge that pondosa is as much entitled to be sold as white pine as ponderosa so named.

PAR. 69. There is a powerful motive for the retailer's substitution of ponderosa under terms which include "white pine" for true white pine in the lower cost of ponderosa and there is excellent opportunity afforded by the fact that architects and consumers can not ordinarily check the material furnished.

E. Extent of the resulting confusion to architects

PAR. 70. Architects desire for exterior uses lumber from such species as possess primarily the quality of durability; for interior

purposes they desire such lumber as possesses the qualities of beauty. The members of the profession prize the qualities of true white pine, and particularly of Northern white pine, which has an exceedingly high reputation among them. Accordingly, architects for many years have specified white pine and are still so specifying, particularly for exterior use.

PAR. 71. The majority of architects desiring true white pine quality specify in terms, "white pine". Under such specification some architects would knowingly accept nothing but strobos; others would knowingly accept any genuine white pine; still others would accept Idaho white pine but not sugar pine.

PAR. 72. The majority of architects do not know whether ponderosa lumber when given names which include the phrase "white pine" is true white pine with true white-pine qualities or not, particularly as to durability. Nor do architects possess the knowledge necessary to apply the microscopic test between true white pines and yellow pines, nor do they have sufficient experience to accurately distinguish between true white pine and ponderosa, particularly in the softer and lighter products of the latter species. They unwittingly accept ponderosa on behalf of their clients when true white pine and its qualities are desired and when white pine is ordered. This is caused by the advertisement and use of names including white pine for ponderosa products.

F. Extent of the resulting confusion to the general public

PAR. 73. The qualities and reputation of the true white pines has led the consuming public to desire and order white pine for many years. This desire persists to the present time and retailers are constantly called upon to furnish white pine. Consumers, however, have less training and opportunity than architects for distinguishing by appearance ponderosa products from true white pine.

PAR. 74. Consumers are constantly buying ponderosa pine under terms which include the phrase white pine when they order white pine and desire it for purposes for which true white pine excels ponderosa. Although ponderosa products have been sold under names which include the phrase white pine in certain markets outside of the regions of production for thirty years there is still almost complete confusion resulting in the mind of the consuming public as to the distinction between ponderosa products so named and true white-pine products. This confusion on the part of the consuming public is to be found even among a substantial proportion of California buyers in spite of the use of the term "California white pine" in local markets since about 1880.

XIII. EFFECT OF THE USE OF TERMS WHICH INCLUDE "WHITE PINE" FOR PONDEROSA PRODUCTS UPON COMPETITION

PAR. 75. The producers of ponderosa products marketed under trade terms which include the phrase "white pine" sell their said products to the wholesale and retail trades and to millwork manufacturers. In this trade they compete in selling to the same customers with producers of true white pine and also with producers of ponderosa who use the term "pondosa pine."

PAR. 76. The use of the phrase "white pine" in names for ponderosa products has a positive monetary advantage for the producers in marketing the product. This is due to the association with and the suggestion of true white pine by means of that phrase.

A. Upon true white pine competitors

PAR. 77. Manufacturers of true white pine have found it more difficult to dispose of their products in competition with the lower priced ponderosa sold under terms which include the phrase white pine. Retailers frequently desiring to purchase so-called white pine products at a low price, accept ponderosa sold under terms which include the phrase white pine for the reason that such lumber can be sold upon orders for white pine better than ponderosa products otherwise named. The retail customer buyers of true white pine products encounter a similar difficulty in competition with retailers selling lower priced ponderosa products under names which include white pine, and this affects their purchases of true white pine.

B. Upon "pondosa pine" competitors

PAR. 78. The manufacturers of ponderosa products who are using the trade term "pondosa pine" have also found it more difficult to dispose of their products in competition with ponderosa products sold under names which include the phrase white pine. This is due in material degree to the use of the phrase white pine in the trade term. Dealers frequently desire to buy lumber products sold under a trade term which includes the phrase white pine and yet can be marketed competitively at prices lower than the prices of true white pine.

PAR. 79. This results in the purchase by certain retailers of ponderosa products designated by terms which include white pine in preference to the competing ponderosa products designated pondosa. Salesmen of pondosa products try to protect themselves by pointing out that pondosa lumber is cut from precisely the same

species of tree as ponderosa lumber sold under terms which include the phrase white pine. Nevertheless, the preference remains for a product the trade name for which includes white pine. Certain retailers can not be convinced that ponderosa and California, etc., white pine products are made from the same species of tree. Others can be convinced but still prefer a product under a trade name which includes the phrase white pine because the latter sells more readily.

XIV. THE RELATION OF THE USE OF TRADE TERMS WHICH INCLUDE THE PHRASE "WHITE PINE" FOR PONDEROSA TO PUBLIC GOOD WILL

PAR. 80. When dissatisfaction occurs from the use of ponderosa lumber delivered under orders for white pine there is a direct tendency towards the discrediting of white pine generally without public discrimination between true white pine and ponderosa products marketed under trade terms which include the phrase white pine. The tendency from the practice of selling true white pine and ponderosa products, all as "white" pines, is to lessen and destroy the especial public confidence in, and the public regard for the true white pines with respect to the important purposes for which true white pine lumber is especially fitted. Such tendency exists without at the same time availing to establish a well-defined and independent reputation and esteem in favor of ponderosa for the important uses to which it is peculiarly adapted. The tendency as to lessen the ability of each of these products to hold the market, as contrasted with lumber substitutes, to the best advantage. The result is further to promote public doubt and confusion as to identity, qualities and comparative excellences of the respective species for various important uses to the market detriment of each.

Summary and conclusions of fact

(a) Respondent is a corporation producing and marketing *Pinus ponderosa* products which it designates, nationally advertises and sells in trade between the States under a term including the phrase white pine.

(b) Certain pine species have long been known to botanists, lumber technologists and the public as the white pine group.

(c) The most widely known of the white pine group is the Northern white pine. The lumber made from this species has for more than 200 years held and still holds a preeminent reputation with the public for certain qualities. It has been widely known under many trade terms which include the phrase white pine.

(d) As a result of said high and long sustained reputation of the white pine group, the consuming public understands and has long understood by the phrase white pine as applied to lumber, not merely a white colored pine wood, but lumber made from a true white pine species and having the qualities and uses of Northern white pine.

(e) *Pinus ponderosa* does not belong either botanically or in public understanding to the white pine group. Its lumber, in certain important qualities and for certain important uses, is inferior to the white pine group.

(f) A substantial number of retail dealers frequently sell ponderosa lumber purchased by them under trade terms which include the phrase white pine, upon orders for white pine, not knowing that ponderosa so named is not a true white pine nor wherein it differs from the latter. Other retail dealers also substantial in number substitute ponderosa so trade-named for higher priced true white pine on such orders, knowing that the latter is not a true white pine and that it differs in certain important qualities therefrom. Both of the foregoing classes of sales are directly promoted by the circumstance that the ponderosa so sold is purchased by the dealer under trade terms which include the phrase white pine. And in making the latter class of sales dealers are partially protected by the trade names in question. Still other retailers sell only true white pine on orders for white pine.

(g) An inducement for the substituting of ponderosa so named on orders for white pine exists in the lower prices paid by the dealers for ponderosa lumber than for true white pine.

(h) The use of the phrase white pine as employed for ponderosa products frequently results in the purchase by the general public unknowingly of ponderosa under orders for white pine and as and for true white pine and results in the approval of ponderosa products unknowingly by architects, when true white pine and the qualities thereof are sought by the buyer and the architect. It results also in the employment of ponderosa products for uses for which it is less adapted than true white pine.

(i) Trade terms which include the phrase white pine have been used for about thirty years in marketing ponderosa products in districts beyond those of its production. But, so long as the public associates the phrase white pine with true white pines and the distinctive lumber qualities of these species, the use of the phrase in question for ponderosa products is inherently misleading and deceptive to the public.

(j) The said confusion is increased by the fact that ponderosa lumber frequently closely resembles that of the true white pines in

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several of its immediately obvious qualities and in several of its utilities.

(k) The employment of said phrase for ponderosa has a tendency toward the adoption of the latter lumber for uses for which it is comparatively lacking in durability.

(l) The employment of said phrase for ponderosa products has a tendency toward a lower public estimation of true white pine lumber.

(m) The use of trade terms which include the phrase white pine for ponderosa products by concerns marketing said products in interstate commerce has caused a diversion of trade from their competitors selling true white pine products and truthfully representing them to be true white pine.

(n) The use of trade terms which include the phrase white pine for ponderosa products by concerns marketing said products in interstate commerce has caused a diversion of trade from their competitors who sell ponderosa products under trade terms which do not include the said phrase and who do not give them a deceptive and misleading trade name.

(o) The use of trade terms which include white pine for ponderosa products has caused and still causes many retailers, architects, and consumers to buy ponderosa products when they have believed themselves and still believe themselves to be purchasing true white pine products.

CONCLUSION OF LAW

The acts and things done by respondent under the conditions and the circumstances described in the foregoing are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been submitted to the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the evidence received by the trial examiner for the Commission and the matter having been presented to the Commission through written and oral argument, by counsel for the Commission, respondent having elected not to present argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress

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approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes,"

It is now ordered, That the Long-Bell Lumber Co., a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and/or sale, in commerce among the several States of the United States, or with foreign countries, of lumber, logs or other forest products made from the pine species known as *Pinus ponderosa*, which have been designated by respondent in its trade as "California white pine" products, do cease and desist from using, either orally or in writing, the word "white" in connection, combination or conjunction with the word "pine" or in connection with other word or words used in combination or conjunction with the word "pine."

And it is further ordered, That the said respondent, within 60 days from the receipt of this order, shall file with the Commission its report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

MEMORANDA

The Commission as of the same date promulgated findings and orders in 38 other cases. Findings and orders in such cases were similar except for the fact that in the cases of Cady Lumber Corporation, Docket 1662, George E. Breece Lumber Co., Docket 1663, and White Pine Lumber Co., Docket 1664, New Mexico concerns, designations New Mexico white pine, Arizona white pine, Western white pine, or white pine only, were employed.

Appearances in this group of cases were:

Mr. Eugene W. Burr for the Commission; *McCutchen, Olney, Mannon & Greene* of San Francisco, Calif., for Clover Valley Lumber Co., Docket 1621, and for twenty other respondents; *Goudge, Robinson & Hughes*, of Los Angeles, Calif., for Sugar Pine Lumber Co., Docket 1639; *Baker, Botts, Andrews & Wharton*, of Kansas City, Mo., for Pickering Lumber Co., Docket 1641, and for Forest Lumber Co., Docket 1649; *Mr. F. P. Farrell*, of Medford, Oreg., for Tomlin Box Co., Docket 1646; and *Mr. Chandler M. Wood*, of Flagstaff, Ariz., and *Mr. Raymond R. Ryan*, of Albuquerque, N. Mex., for Cady Lumber Corporation, Docket 1662, George E. Breece Lumber Co., Docket 1663, and White Pine Lumber Co., Docket 1664.

Respondents making up this group of cases, their places of business, and their docket numbers follow:

Clover Valley Lumber Co., Reno, Nev., Docket 1621.

Castle Crag Lumber Co., Castella, Shasta County, Calif., Docket 1623.

Davies-Johnson Lumber Co., Calpine, Sierra County, Calif., Docket 1624.

Diamond Match Co., Chico, Calif., Docket 1625.

California Fruit Exchange, Sacramento, Calif., Docket 1626.

Likely Lumber Co., Likely, Modoc County, Calif., Docket 1627.

Penman Peak Lumber Co., Blairsden, Plumas County, Calif., Docket 1628.

Feather River Lumber Co., Delleker, Plumas County, Calif., Docket 1629.

California Door Co., Diamond Springs, Eldorado County, Calif., Docket 1630.

Kesterson Lumber Co., Dorris, Siskiyou County, Calif., Docket 1631.

Hobart Estate Co., San Francisco, Calif., Docket 1632.

Fruit Growers Supply Co., Los Angeles, Calif., Docket 1633.

McCloud River Lumber Co., McCloud, Siskiyou County, Calif., Docket 1635.

Siskiyou Lumber Co., Mt. Hebron, Siskiyou County, Calif., Docket 1636.

Swayne Lumber Co., Oroville, Butte County, Calif., Docket 1637.

Paradise Lumber Co., Paradise, Butte County, Calif., Docket 1638.

Sugar-Pine Lumber Co., Pinedale, Fresno County, Calif., Docket 1639.

Quincy Lumber Co., Quincy, Plumas County, Calif., Docket 1640.

Pickering Lumber Co., Kansas City, Mo., Docket 1641.

Spanish Peak Lumber Co., San Francisco, Calif., Docket 1642.

Lassen Lumber & Box Co., San Francisco, Calif., Docket 1643.

Red River Lumber Co., San Francisco, Calif., Docket 1644.

Owen-Oregon Lumber Co., Medford, Oreg., Docket 1645.

Tomlin Box Co., Medford, Oreg., Docket 1646.

Big Lakes Box Co., Klamath Falls, Oreg., Docket 1647.

Ewauna Box Co., Klamath Falls, Oreg., Docket 1648.

Forest Lumber Co., Kansas City, Mo., Docket, 1649.

Klamath Lumber & Box Co., Klamath Falls, Oreg., Docket 1650.

Lamm Lumber Co., Modoc Point, Klamath County, Oreg., Docket 1651.

Pelican Bay Lumber Co., Klamath Falls, Oreg., Docket 1652.

Algoma Lumber Co., Klamath Falls, Oreg., Docket 1654.

Chiloquin Lumber Co., Chiloquin, Klamath County, Oreg., Docket 1655.

Shaw-Bertram Lumber Co., Klamath Falls, Oreg., Docket 1656.

Braymill White Pine Co., Braymill, Klamath County, Oreg., Docket 1657.

California-Oregon Box & Lumber Co., Ashland, Oreg., Docket 1658.

Cady Lumber Corporation, Albuquerque, N. Mex., Docket 1662.

George E. Breece Lumber Co., Albuquerque, N. Mex., Docket 1663.

White Pine Lumber Co., Bernalillo, Sandoval County, N. Mex., Docket 1664.

Syllabus

IN THE MATTER OF

L. A. BELLINE, TRADING AS THE COOPERATIVE
BOOK COMPANY

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

Docket 1551. Complaint, Dec. 20, 1928—Decision, June 15, 1931

Where an individual engaged in the purchase, and sale throughout the United States, of a set of reference books known up to 1927 as "The American Reference Library", and, later, as "The Source Book", together with semi-annual cumulative supplements; in selling said books and supplements, to school teachers, principally, through agents operating in Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri, and other States,

- (a) Represented said American Reference Library as of recent publication and that certain designated persons well known as educators, public officials, writers, scientists and statesmen were contributors, revisers, or reviewers thereof, facts being books were originally published as early as 1912 and at time concerned there had been no substantial revision for a number of years, and the well known educators, etc., were not contributors, revisers or reviewers as represented, and had given no permission for the use of their names;
- (b) Falsely represented that said Library and Source Book had the indorsement of and testimonials from certain county superintendents and other educators and writers and that its agents had some connection with educational or school systems, whereby prospective customers might be materially assisted in securing desirable positions as school teachers;
- (c) Represented that \$59.50 was a special introductory price far below the usual and customary selling price of the set and cumulative extension service, and also that the books were given away to a limited and selected number of prospective school teachers as a means of introducing the publication into the schools, facts being \$59.50 constituted said individual's usual and customary price and prospective customers were not limited or selected in any way; and
- (d) Represented that loose-leaf supplements could be paid for at the rate of \$5.95 a year, with right of cancellation at will by the subscriber, facts being said cumulative loose-leaf supplement was never sold separately, price for set and books was \$59.50, payable in monthly installments extending over periods of from eight months to one year, failure to make any payment when due rendered entire account due and payable, at no time was anyone allowed to extend payments over a period of ten years, and contract entered into was a promissory note, prima facie binding purchaser when signed by him, and not cancelable at will;

With effect of deceiving customers and prospective customers throughout the various States and inducing their purchase of or subscription to said books and supplements in preference to other competitive publications, and with tendency so to do and thereby divert trade from competitors not using such false and misleading sales methods, statements, and representations:

Held, That such practices, under the conditions and circumstances above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

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Mr. PGad B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the purchase of an encyclopedia or book of reference called by him The New American Reference Library and/or certain additions thereto known as an extension or revision service, from the Perpetual Encyclopedia Corporation of Chicago, and in the distribution and sale thereof throughout the United States, and with offices at Lamar, Mo., with misrepresenting product and services, and misrepresenting prices, marketing, business connections and testimonials, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in the sale of the aforesaid reference library and so-called extension or revision service through himself and his agents has employed false, deceptive and fraudulent sales talks or representations in that he—

Represented the same as of recent publication and as sold ordinarily at certain prices which greatly exceeded those at which said library and revision service were actually and were expected to be offered;

Represented many well-known educators, public officials, writers, scientists, and statesmen as having been instrumental in compiling said library and/or extension or revision service or as having revised or reviewed the same, and certain testimonials or recommendations of the aforesaid publication as having been or being currently given by various State or county superintendents of education or prominent educators or writers;

Represented himself and/or his agents as connected with schools or other educational institutions and desirous of employing prospective graduates as instructors or teachers, thereby obtaining interviews with them for the purpose of selling to them the aforesaid publications;

Represented said library as being given away to a limited and selected number of school teachers as a means of introducing the same into the schools and that the extension or revision service could be paid for at the rate of \$5.95 a year and that the subscriber was free to cancel his subscription thereto at will;

Represented the date of publication appearing in said library as the date when it was first compiled and printed; and

Employed for more than two years last past the practice of making an additional charge against subscribers to the aforesaid service beyond that they were informed they would have to pay at the time of subscription, notifying the subscriber after his subscription and before delivery of said service of such additional charge which must first be paid; and

Sold as said "The American Reference Library" the same books contemporaneously widely sold direct to the public by the Perpetual Encyclopedia Corporation as "The Source Book", thereby misleading and deceiving the purchasing public into purchasing said library as and for an entirely different publication or reference work from that sold direct as above set forth; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, L. A. Belline, trading as The Cooperative Book Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer to the complaint herein, hearings were had and evidence was introduced upon behalf of both the Commission and respondent before a trial examiner of the Commission duly appointed thereto.

Thereupon this proceeding came on for final hearing on the 13th day of May, 1931; counsel for respondent having failed to file a brief on his behalf, and not appearing, oral argument was waived and the case was submitted to the Commission upon the record, respondent's exceptions and brief of counsel for the Commission. The Commission having duly considered the whole record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, L. A. Belline, is an individual trading as The Cooperative Book Co., with principal office at Lamar, Mo. He is now and for several years last past has been engaged in the purchase, distribution, and sale throughout the United States of a set of books of reference which up to 1927 were known as The American Reference Library, and thereafter, as The Source Book,

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together with semiannual cumulative supplements. Such books and extension service are purchased from The Perpetual Encyclopedia Corporation of Chicago, Ill., and when resold by respondent are caused by respondent to be transported either from the city of Chicago, State of Illinois, or from Lamar, Mo., into and through the various States of the United States for delivery to the purchasers thereof. In the course and conduct of its said business respondent has been and still is in competition with other individuals, partnerships, and corporations likewise engaged in the sale and distribution of books of reference throughout the various States of the United States.

PAR. 2. In the course and conduct of its business respondent through its agents operating in the States of Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri, and other States has represented and represents to its prospective customers, principally school teachers, that—

(a) Its books of reference The American Reference Library, now known as The Source Book, are of recent publication, when as a matter of fact the respondent admits that such books were originally published in six volumes as early as 1912. In 1922 a substantial revision of the plates from which the encyclopedia is printed was made and a further substantial revision was made in the 1929 edition. Comparison of 1,415 out of 3,197 pages in the 1913 edition and the 1929 edition showed a revision of less than 4 per cent of the number of articles in addition to the 1920 Census figures and some maps and other material which had been inserted. There was very little revision between the 1924 edition and the 1929 edition, so that during 1926–1927, the time when most of the sales referred to in the evidence were made, respondent was selling a set purporting to be compiled in 1924 and 1926 but which had had no substantial revision made therein since 1922.

(b) That \$59.50 was a special introductory price far below the usual and customary selling price of the set of books and cumulative extension service, when as a matter of fact it was the usual and customary price at which the reference books were sold to all persons who could be induced to buy them;

(c) That certain designated persons well known as educators, public officials, writers, scientists, and statesmen were contributors, revisers or reviewers of the books, when the persons so named were not contributors, revisers, or reviewers thereof; and had given no permission for respondent to use their name;

(d) That The American Reference Library and The Source Book had the indorsement of and testimonials from certain county super-

intendents and other educators or writers when as a matter of fact such endorsements and testimonials had not been obtained;

(e) That respondent's agents had some connection with educational or school systems whereby the prospective customers of respondent might be materially assisted in securing desirable positions as school teachers, when as a matter of fact there was no such connection;

(f) That the books were being given away to a limited and selected number of prospective school teachers as a means of introducing said publication into the schools, when as a matter of fact respondent was giving nothing away and the prospective customers were not limited or selected in any way;

(g) That the semiannual cumulative loose-leaf supplements could be paid for at the rate of \$5.95 a year, the subscriber being free to cancel the subscription at will when as a matter of fact the said cumulative loose-leaf supplement was never sold separately but was always sold with the books, the price for both being \$59.50, payable in monthly installments extending over periods of from eight months to one year. A failure to make any payment when due rendered the entire account due and payable. At no time was anyone allowed to extend the payments over a period of ten years. The contract entered into was a promissory note, prima facie binding on the purchaser when signed by him and not cancelable at will.

PAR. 3. The respondent is charged in paragraph 3 of the complaint with having followed the practice of making an additional charge against subscribers for the so-called extension or revision service after the subscription has been procured upon a different and lower price basis, and with not notifying the subscriber of this additional charge until after the subscription is obtained.

The Commission finds that the proof shows that in a great many cases the respondent's agents did advise the prospect that there would be a small charge of 24 cents twice a year to be made in addition to the \$59.50. The Commission finds that allegation is not supported by the testimony.

PAR. 4. The fourth paragraph of the complaint charges respondent with misleading and deceiving the purchasing public by selling under the name American Reference Library the same set of books as was being sold by a competitor under the name The Source Book. The evidence in this case fails to show that respondent has sold these books under any other name than The Source Book since 1927, and fails to show that any member of the public was misled or deceived by the respondent's use of the former title prior to 1927.

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Wherefore, the Commission finds that this particular charge is not supported by the evidence.

PAR. 5. The foregoing statements, sales methods, and representations used and made by respondent in the course and conduct of his business have the capacity and tendency to deceive and have deceived customers and prospective customers throughout the various States of the United States, and have the tendency to cause and have caused prospective customers to purchase or subscribe to respondent's set of books and cumulative supplement in preference to other competitive publications, all of which is calculated to and has the tendency to create diversion of trade from competitors not using such false and misleading sales methods, statements, and representations.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony taken, the brief of counsel for the Commission, counsel for respondent having waived both the filing of brief and oral argument, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, L. A. Belline, trading as The Cooperative Book Co., his agents, representatives, servants, and employees, in connection with the sale and distribution in interstate commerce of The American Reference Library or The Source Book or other books or sets of books, do cease and desist from directly or indirectly representing to customers or prospective customers:

(a) That The American Reference Library or The Source Book are of new or recent publication unless and until they shall have been revised and brought up to date;

(b) That the usual and customary selling price of his set of books and extension service or semiannual cumulative supplement is a special or introductory price;

(c) That any persons well known as educators, public officials, writers, scientists, and statesmen are contributors, revisers or reviewers of the books sold by respondents unless and until such persons actually shall have contributed articles or actually shall have reviewed or revised an article submitted to them and shall have given permission to respondents to use their names;

(d) That his books have indorsements of and testimonials from county superintendents of education or others unless and until such indorsements and testimonials have actually been obtained;

(e) That respondent's agents are connected with school or educational systems in such a way that respondent's prospective customers might be materially aided in securing desirable positions as teachers;

(f) That his books are being given away to a limited and selected number of prospective school teachers or other customers as a means of introducing said publication into the schools, unless and until respondent is actually making such gifts in such a manner for such a purpose;

(g) That the semiannual cumulative loose-leaf supplements can be paid for at the rate of \$5.95 a year, the subscriber being free to cancel the subscription at will when such is not the case.

It is further ordered, That the said complaint be and the same hereby is dismissed as to the charges contained in paragraphs 3 and 4 thereof.

And it is further ordered, That respondent, within 60 days after service upon him of a copy of this order, shall file with the Commission a report in writing setting forth in detail the manner and form of his compliance with this order.

Complaint

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IN THE MATTER OF
DIEL WATCH CASE COMPANY, INCORPORATED ¹

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

Docket 1944. Complaint, Apr. 28, 1931—Order, June 15, 1931

Consent order requiring respondent to cease and desist from using the phrase "Rolled Gold Plate" or other words of like import in connection with the marking or advertising of watch cases dealt in by it, not containing as much as 3/1000 of an inch in thickness of gold on the outside, nor as much as 1/1000 of an inch in thickness, on the inside; as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Mr. Jacob M. Zinaman, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Diel Watch Co., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Diel Watch Case Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office, factory, and place of business in the city of New York, in said State. It is now, and for more than one year last past has been engaged in the manufacture of watch cases and the assembling of watches, and in the sale and distribution of said products to jewelry jobbers located in various cities throughout the several States of the United States; causing said products, when so sold, to be shipped or transported in interstate commerce, from its said factory in the State of New York to the purchasers thereof located in States other than the State of New York. Such jobbers sell said watch cases and watches to retailers who, in turn, sell the same to ultimate purchasers thereof. In the

¹ By order made as of January 7, 1932, the cease and desist order herein reported, was rescinded and the complaint dismissed. See 16 F. T. C.

course and conduct of its said business, respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of watch cases and watches in interstate commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Said respondent in the course and conduct of its said business, as described in paragraph 1 hereof, has, for more than one year last past, stamped, branded, and labeled, and now stamps, brands, and labels its said watch cases with the term and designation, Rolled Gold Plate; and said watch cases and watches are resold to the public by retailers stamped, branded, or labeled with said term and designation. Respondent in soliciting the sale of and selling its said products has caused and now causes advertisements to be inserted in trade magazines and other publications having interstate circulation, and has also distributed circulars, pamphlets, catalogues, and other printed matter among the jewelry trade and the purchasing public located in various States of the United States, in which said advertisements and advertising matter it has used and now uses the said phrase, term or designation, "Rolled Gold Plate", in connection with, and as descriptive of, its said watch cases and watches sold and distributed by the said respondent in interstate commerce, as aforesaid.

PAR. 3. The said phrase or term, "Rolled Gold Plate", is a well established and standard term, when used in connection with the advertising, sale, and distribution of watch cases and watches, and is understood by the jewelry trade to signify and designate a watch case, or a watch with a case, manufactured so as to contain not less than three one-thousandths of an inch in thickness of gold on the outside of said watch case, and not less than one one-thousandths of an inch in thickness of gold on the inside of said watch case; in truth and in fact said watch cases so stamped, branded, labeled, represented, and described, were and are manufactured by respondent so as to contain less than three one-thousandths of an inch in thickness of gold on the outside of said watch cases and less than one one-thousandths of an inch in thickness of gold on the inside of said watch cases.

PAR. 4. The use by said respondent of the said standard term, "Rolled Gold Plate", in stamping, branding, labeling, and advertising said watch cases and watches, as set forth in paragraph 2 hereof, had, and now has, the capacity and tendency to mislead and deceive the jewelry trade into the erroneous belief that such watch cases and cases of watches so offered for sale and sold by said respondent contain greater thickness of gold on the inside and outside thereof than they do in fact contain, and to enable and cause retailers

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to sell and to cause ultimate purchasers to buy such watches and watch cases in such belief; and to divert trade to said respondent from competitors who manufacture, sell and distribute in interstate commerce watch cases and watches which are truthfully stamped, branded, or labeled, advertised, sold, or offered for sale.

PAR. 5. The above alleged acts and practices of the said respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 28th day of April, 1931, issued its complaint against Diel Watch Case Co., Inc., respondent herein, and caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On May 26, 1931, respondent filed herein a written answer to said complaint in the following language:

Comes now Diel Watch Case Co., Inc., respondent, and in answer to the complaint herein states:

1. That respondent refrains from contesting this proceeding:

2. That respondent consents that the Federal Trade Commission may make, enter, and serve upon it an order to cease and desist from the violation of the law alleged in the complaint.

and the Commission having considered and accepted the terms of said answer and being fully advised in the premises:

It is ordered, That respondent, Diel Watch Case Co., Inc., its agents, employees, or successors do cease and desist from doing directly or indirectly any and all of the acts hereinafter designated and set forth in paragraph 1 hereof—

PARAGRAPH 1. From selling, offering for sale, or distributing watch cases or cases of watches in interstate commerce which are stamped, branded, or labeled with the phrase Rolled Gold Plate or other words of like import and from using the term Rolled Gold Plate in advertising watch cases or cases of watches in magazines, trade journals,

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newspapers, in circulars, pamphlets, catalogues, and other printed matter, or otherwise, or other words or phrases of like import, unless such watch cases or cases of watches contain not less than three one-thousandths of an inch in thickness of gold on the outside thereof and not less than one one-thousandth of an inch in thickness of gold on the inside thereof.

PAR. 2. *It is further ordered,* That respondent, within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

ISIDOR WETCHLER AND SOLOMON WETCHLER, TRADING UNDER THE FIRM NAME AND STYLE L. WETCHLER & SONS—OLD GOLD COMBINATION WHITE LEAD & COLOR CORPORATION, AND ISIDOR AND SOLOMON WETCHLER AS OFFICERS THEREOF—CAMEL LEAD COLOR & CHEMICAL PRODUCTS MANUFACTURING CORPORATION, AND ISIDOR WETCHLER AND SOLOMON WETCHLER AS OFFICERS THEREOF

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

Docket 1829. Complaint, May 10, 1930—Decision, June 17, 1931

Where partners dealing in paint and painters' supplies; in engaging upon the manufacture of such products through two companies, which (1) were incorporated by them as Old Gold Combination White Lead & Color Corporation and Camel Lead Color & Chemical Products Manufacturing Corporation, respectively, (2) were caused by them to register, respectively, as trade-marks the words "Old Gold," and the word "Camel," and conspicuously, the words "Lead" and "Color," and, inconspicuously, the words "& Chemical Products Manufacturing Corporation," and (3) were owned and operated by them without disclosing that said companies were merely their corporate instrumentalities,

- (a) Employed aforesaid corporate names or portions thereof as trade-marks in advertising, designating, and describing paints and painters' materials which they caused to be made, offered, and sold by said corporations as products of said Camel Lead Color, etc., Corporation, and upon the labels and containers thereof, so as to feature through position, manner, color, and size the words "Old Gold" and "White Lead," with the word "combination" in smaller letters, notwithstanding the fact that product so described contained no more than 1 per cent of lead mixed with approximately 89 per cent of other pigment; and
- (b) Employed the same arrangement of words as aforesaid in offering and selling a product in containers bearing the corporate name Old Gold Combination White Lead & Color Corporation and featuring the words "Zinc Lead," so placed in relation to said corporate name as to signify a combination consisting of white lead and zinc without other ingredients, and captioned the circular included with the product Old Gold Combination White Lead, conspicuously displaying the first two and last two words, notwithstanding the fact that said product contained no more than a negligible amount of lead and an unsubstantial amount of zinc;

With capacity and tendency to mislead and deceive the purchasing public into believing that the products so offered and sold consisted of white lead, or of a predominant white lead, or zinc and lead, combination, as the case might be, and with effect of furnishing wholesale and retail dealers with the means enabling them to mislead and deceive their respective customers into the erroneous belief that former product trade-marked Old Gold Combination White Lead & Color Corporation was composed as above set forth, and

that captioned "zinc lead" consisted of a combination of zinc and white lead, and to induce the purchase of said products in reliance upon such erroneous beliefs, and with capacity and tendency to divert trade to them and their corporations from competitors offering and selling materials for paints and painters' supplies truthfully described:

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

Mr. James M. Brinson for the Commission.

Mr. George Rosenberg, of Brooklyn, N. Y., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Isidore and Solomon Wetchler, partners, dealing as L. Wetchler & Sons, in paints and painters' materials and supplies, at wholesale, and engaged, through their respondent corporate instrumentalities, in manufacture and sale of paints and aforesaid materials and supplies, and with place of business in New York City, and respondents Old Gold Combination White Lead and Color Corporation and Camel Lead Color and Chemical Products Manufacturing Corporation, two New York corporations, their aforesaid instrumentalities, organized, owned, and operated by them, and with principal place of business in the same premises, in Brooklyn, with using corporate names, instrumentalities, and trade-marks misleadingly, misbranding, or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents Wetchler, as charged, engaged as above set forth, following their organization of the aforesaid corporations, caused said corporations to register, respectively, (1) the words "old gold", and (2) the words "camel", "lead", and "color" in conspicuous letters on each side of the depiction of a camel, and in inconspicuous letters, the words "& Chemical Products Manufacturing Corporation", as their respective trade-marks, and so to employ their corporate names as trade-marks and on labels and in advertising as to appear to describe the products (which they caused said corporations to manufacture) as "white lead", or "zinc lead" products made and offered for sale by said Camel, etc., Corporation, and respondent corporations, in pursuance of aforesaid policy, have made it their practice, acting at the instance of and under the direction and control of said individual respondents and/or in conjunction and cooperation with each other, to offer and sell said materials and sup-

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plies for paints and painters as and for "white lead" and "zinc lead" through advertising matter distributed among purchasers and prospective purchasers, and labels on the containers of their products, in or on which respondent Camel Lead, etc., Corporation, appears or purports to offer the products for sale, and in or on which the corporate name of respondent Old Gold Combination White Lead and Color Corporation appears or purports to be a part of the trademark and a description of the commodity offered,¹ and to conceal their connection with said individual respondents.

Respondents, further, as charged, in the course and conduct of their aforesaid business, "have offered for sale, and offer for sale, in commerce through respondent Camel Lead Color & Chemical Products Manufacturing Corporation, among and between the various States of the United States, a product which they falsely describe on advertising matter and other literature distributed by them among purchasers and prospective purchasers, as shellac camel."

"In truth and in fact" as alleged, "the product offered for sale and sold by respondents as and for white lead has consisted of and contained, and consists of and contains no more than approximately 1 per cent of lead, and the product offered for sale and sold by respondents as and for zinc lead has consisted of and contained, and consists of and contains no more than 51 per cent of zinc, 1 per cent of lead, and 48 per cent of lead and zinc substitutes, and neither of them has been, or is, either white lead or a combination white lead or zinc lead or combination zinc and lead as such terms have been and are generally understood by the trade and the purchasing public, and in truth and in fact their product offered for sale and sold as shellac camel was not and is not manufactured wholly of genuine

¹The practice employed is further alleged in detail in the complaint as follows:

"As an aid to such end, in such trade-mark and other advertising matter so distributed by respondents among purchasers and prospective purchasers, as well as on the containers of their products, such corporate name (Old Gold Combination White Lead and Color Corporation) is so arranged in color, size of letters and background that the words 'white lead' are conspicuous and outstanding. On such labels and advertising matter appear the representation of a sunburst with the word 'old' on one side of it and the word 'gold' on the other side. Beneath the sunburst appear the words 'old—gold—white' in smaller letters, and below this in still smaller letters, relatively, the word 'combination,' beneath which appear the words 'White Lead' in letters so large and conspicuous that they appear as the prominent and outstanding words on the label and other advertising matter. On posters and other advertisements so distributed by respondents among purchasers and prospective purchasers, appear at the right of the label the words 'lift up this label,' and beneath the label, when lifted, appears the representation of a camel with the word 'camel' appearing above such representation, the word 'lead' on its left, and the word 'color' on its right in large and conspicuous letters, while below and in less conspicuous letters appears the remainder of the corporate name of said respondent, and the word 'lead' appears as an outstanding and prominent word on such posters and other advertising matter."

shellac gum dissolved in alcohol as understood by the trade and the purchasing public to be the constituent elements or formula of which shellac is composed, but was and is manufactured or compounded so as to contain in varying quantities, elements, ingredients, or substitutes other than those contained in the product known to the trade and the purchasing public as shellac."

"The above and foregoing methods and practices of respondents," as alleged, "have had and now and still have, and each of them has had and now and still has, the capacity and tendency to mislead the purchasing public into the belief that their several products so offered for sale and sold consist respectively of white lead, of a combination of zinc and lead, and of shellac, and have furnished and furnish, and each of them has furnished and furnishes wholesale and retail dealers with the means by which they have been and are enabled to mislead and deceive their respective customers into the belief that the product described by respondents with the corporate name of respondent Old Gold Combination White Lead & Color Corporation as a trade-mark consists of white lead, that the product described as zinc lead consists of a combination of zinc and lead, and that the product described as shellac—camel, consists of shellac, and to induce the purchase of one or more of said several products in reliance on one or more of said erroneous beliefs.

"Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon Isidor Wetchler and Solomon Wetchler, trading under the firm name and style of L. Wetchler & Sons—Old Gold Combination White Lead & Color Corporation, and Isidor and Solomon Wetchler as officers thereof—Camel Lead Color & Chemical Products Manufacturing Corporation, and Isidor Wetchler and Solomon Wetchler as officers thereof, hereinafter called respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered their appearance and filed answer, testimony and documentary evidence were received and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Com-

mission on the complaint, answer, testimony and evidence, brief in support of the complaint by counsel for the Commission, respondents having submitted no brief or argument, and the Commission having duly considered the same, now makes this its report in writing, and states its findings as to the facts and conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Isidor Wetchler and Solomon Wetchler are now, and for several years last past have been engaged in the operation of a paint and painters' supply store in the city of New York and State of New York, under the trade name and style of L. Wetchler & Sons, and in the sale of materials and supplies for paints and painters at wholesale and retail.

In September, 1928, they caused to be organized and incorporated under and by virtue of the laws of said State of New York, respondents Old Gold Combination White Lead & Color Corporation and Camel Lead Color & Chemical Products Manufacturing Corporation, and each of said corporations ever since has been, and now is a corporation duly existing and doing business under the laws of said State and occupying as their principal place of business the same premises in the city of Brooklyn and State of New York.

Respondents Isidor Wetchler and Solomon Wetchler after the said organization of respondent corporations commenced, and since then have continued the manufacture of materials and supplies for paints and painters, by and through the instrumentality or agency of the above named respondent corporations, both of which have offered for sale and sold material and supplies for paints and painters, in commerce among and between the various States of the United States, causing such products, when sold, to be transported from their place of business in the State of New York to purchasers thereof in the various States of the United States other than the State of New York. In the course and conduct of such business, respondents have been and are, and each of them has been, and is in competition with individuals, partnerships, and corporations engaged in the sale of materials and supplies for paints and painters in interstate commerce.

Respondents Isidor Wetchler and Solomon Wetchler are now and have been since their incorporation of Old Gold Combination White Lead & Color Corporation and of the Camel Lead Color & Chemical Products Manufacturing Corporation, owners of said corporations and of their corporate stock. They have created, formed and instituted, and have maintained and directed the policies, methods, and practices of said respondent corporations and of each of them, and have at all times hereinafter mentioned, dominated, controlled,

directed, and been responsible for, and now dominate, control, direct, and are responsible for the representations, transactions, sales, and other activities of said respondent corporations and of each of them in commerce among or between the various States of the United States.

The said individual respondents Isidor Wetchler and Solomon Wetchler have failed and neglected to cause said respondent corporations to disclose that they have been and are their corporate instrumentalities, or that the said corporate respondents in the course and conduct of their business have cooperated with each other, and by concert of action, have reflected the policies and effectuated the purposes of said individual respondents.

PAR. 2. On September 18, 1928, there were registered in the United States Patent Office the words "Old Gold" as a trade-mark. These words were so registered on a statement which individual respondents Isidor Wetchler and Solomon Wetchler caused to be made through respondent Old Gold Combination White Lead & Color Corporation. Such statement contained the representation, among other things, that the trade-mark had been adopted and used by respondent Old Gold Combination White Lead & Color Corporation since January 23, 1928, for certain paints and painters' materials, including white lead and zinc lead, and the said individual respondents caused the name of said respondent corporation Old Gold Combination White Lead & Color Corporation to be subscribed thereto by respondent Isidor Wetchler as well as his own signature, and he was therein described as president of said respondent corporation.

On April 23, 1928, there was registered in the United States Patent Office as a trade-mark the representation of a camel, with the word "camel" appearing above it, the word "lead" in large and conspicuous letters on the one side, and the word "color" in large and conspicuous letters on the other side of it, while beneath it, in relatively small and inconspicuous letters, appeared the words "& Chemical Products Manufacturing Corporation." The trade-mark was so registered on a statement caused to be made by the Camel Lead Color & Chemical Products Manufacturing Corporation through respondent Solomon Wetchler. Such statement contained the representations, among other things, that the trade-mark had been adopted and used since January 1, 1928, for certain paints and painters' materials, including white lead and combination white lead by such respondent corporation.

PAR. 3. Respondents Isidor Wetchler and Solomon Wetchler after the organization of said respondent corporations and the registration of the trade-marks described in paragraph 2 hereof, caused said respondent corporations to manufacture and offer for sale, and they

have manufactured and offered for sale, and now manufacture and offer for sale as products of respondent Camel Lead Color & Chemical Products Manufacturing Corporation, certain material and supplies for paints and painters, and have adopted and used, and still adopt and use as their method in advertising, designating, and describing their products, employment of the corporate names or portions of them of respondent Old Gold Combination White Lead & Color Corporation and respondent Camel Lead Color & Chemical Products Manufacturing Corporation as trade-marks, and on containers of their products, or on labels affixed thereto in such position, manner, color, and size of letters, that the words "old gold" and the words "white lead" are the conspicuous and predominating features of advertisements and labels, with the word "combination" in smaller letters preceding the words "white lead." Such arrangement of the corporate name of respondent Old Gold Combination White Lead & Color Corporation, depending on observation of the word "combination," signifies a product consisting of white lead entirely, or a product containing white lead as its principal and predominant ingredient.

Respondents have also offered for sale and sold a certain product in cans or containers bearing the said corporate name of respondent, Old Gold Combination White Lead & Color Corporation, with the same arrangement of the words composing such name as hereinabove described both on the body and on the top of the can or container of the product but with the words "zinc lead" in large and conspicuous letters so placed relative to the said corporate name Old Gold Combination White Lead & Color Corporation as to signify and mean a combination consisting of white lead and zinc without other ingredients.

Respondents have also placed or caused to be placed in every can or container of its product offered for sale or sold, as herein described, a circular in several languages including the English which is headed in the English version Old Gold Combination White Lead. The words "old gold" and the words "white lead" are conspicuous.

In truth and in fact the product so advertised and labeled by respondents as to appear to designate or describe it as "white lead" or "combination white lead" has not contained and does not contain more than 1 per cent of lead which has been and is mixed with approximately 89 per cent of other pigment. An analysis of such product by the United States Bureau of Standards is as follows:

Color, white; consistency, paste; pigment percentage by weight, 90.9; figure percentage by weight, 9.1; nature of pigment, contains approximately 1 per cent white lead (0.96 per cent total lead expressed as $PbSO_4$).

The product offered for sale and sold by respondent in cans or containers bearing on their top the words "zinc lead" in conspicuous letters together with the name Old Gold Combination White Lead & Color Corporation have not contained and do not contain more than a negligible amount of lead and an unsubstantial amount of zinc. Analysis of such product by the United States Bureau of Standards is as follows:

	Per cent
Lead sulphate -----	0.6
Lithopone -----	35.8
(10 per cent zinc sulphide—25.8 per cent barium sulphate)	
Additional barium sulphate -----	52.6
Silicious matter -----	0.7
Zinc oxide -----	9.4

PAR. 4. The acts and practices of respondents described in paragraph 3 hereof have had and have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that of the products so offered for sale and sold, one consists of white lead, or of a combination of white lead with such lead predominating, and the other consists of a combination of zinc and lead, and have furnished, and furnishes wholesale and retail dealers with the means by which they have been and are enabled to mislead and deceive their respective customers into the erroneous belief that the product described by respondent with the corporate name of respondent Old Gold Combination White Lead & Color Corporation as a trade-mark consists of white lead or a combination with white lead predominating, and that the product described as zinc lead consists of a combination of zinc and white lead, and to induce the purchase of said products in reliance on such erroneous belief or beliefs.

PAR. 5. The aforesaid practices of respondents have had and have, and each of them has had, and has, the capacity and tendency to divert trade to respondents from competitors offering for sale and selling materials for paints and painters' supplies truthfully described.

CONCLUSION

The acts and practices described in the above and foregoing findings as to the facts, have been and are all to the prejudice of the public and of respondents' competitors, and have constituted unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents, Isidor Wetchler and Solomon Wetchler, trading under the firm name and style L. Wetchler & Sons; Old Gold Combination White Lead & Color Corporation, and Isidor and Solomon Wetchler as officers thereof; Camel Lead Color & Chemical Products Manufacturing Corporation, and Isidor and Solomon Wetchler as officers thereof, answers thereto, testimony and documentary evidence, brief and argument of counsel for the Commission, and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that respondents have been and are violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is therefore ordered, That respondents, Isidor Wetchler and Solomon Wetchler, trading under the firm name and style L. Wetchler & Sons—Old Gold Combination White Lead & Color Corporation, and Isidor and Solomon Wetchler as officers thereof—Camel Lead Color & Chemical Products Manufacturing Corporation, and Isidor Wetchler and Solomon Wetchler as officers thereof, their agents and employees cease and desist directly or indirectly (a) from using or causing to be used in connection with any product offered for sale or sold in interstate commerce a firm or corporate name, trademark or other designation in advertisements of such product or on containers thereof, in such position, manner, form or color, that the words "lead," "white lead" or "combination white lead" designate or describe or appear to designate or describe the product, unless when the words "lead" or "white lead" are so used the pigment of the product is composed entirely of white lead; or when the words "combination white lead" are so used the pigment of the product actually consists of white lead as its principal and predominant ingredient, to the extent of not less than 50 per cent by weight of the product. (b) From using the words "zinc lead" in advertisements or on containers of any product offered for sale or sold in interstate commerce or on labels affixed thereto unless the pigment of such product actually consists of zinc and lead.

It is further ordered, That respondents and each of them shall within 60 days from and after service hereof file with the Commission a report in writing stating the manner and form in which it has complied with the terms of this order.

Complaint

IN THE MATTER OF

STRAUSS BROS. WHOLESALE TAILORS, INC., DAVIS-ROGERS TAILORING CO., INC., AND S. A. AND W. W. STRAUSS

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

Docket 1941. Complaint Apr. 27, 1931—Order, June 26, 1931

Consent order requiring respondents to cease and desist from using the words "tailors" or "tailoring" in their corporate or trade names, or from representing that the ready-made clothing made and dealt in by them is cut and made to the individual tailoring measurements of the respective purchasers, or is composed entirely of wool or of wool and silk, when such is not the case; all as in said order set forth and qualified.

Mr. James W. Nichol for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Strauss Bros. Wholesale Tailors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Chicago, in said State, said respondent is owned and controlled by said individual respondents, and is now and for more than one year last past has been engaged in the manufacture and/or purchase of men's ready-made clothing, and in the sale and distribution thereof in commerce between and among various States of the United States, through the instrumentality of a number of distributing companies, including respondent Davis-Rogers Tailoring Co., Inc., Howard Tailoring Co., Hudson Tailoring Co., Mills & Hall, Strauss Bros., and United American Tailors, all of which are owned, controlled, and operated by said individual respondents and have their offices and principal

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places of business in the city of Chicago, in the State of Illinois. In the course and conduct of its business said respondent corporation is and was at all the times herein referred to in competition with persons, firms, and other corporations engaged in the sale and distribution in interstate commerce of similar or competing products.

PAR. 2. Respondent, Davis-Rogers Tailoring Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State. Said respondent corporation is owned and controlled by the said individual respondents and is now and for more than one year last past has been engaged as a selling agent or distributor for said respondent, Strauss Bros., Wholesale Tailors, Inc., in the sale and distribution of men's clothing in interstate commerce in the manner hereinafter set forth.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, Strauss Bros., Wholesale Tailors, Inc., in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised, sold, and distributed through its distributing companies, including the respondent Davis-Rogers Tailoring Co., Inc., Howard Tailoring Co., Hudson Tailoring Co., and United American Tailors, and advertised said names, including the words "tailoring" and "tailors", appearing therein, through the medium of sample or swatch books, order blanks, and by other means.

PAR. 4. Respondent, Strauss Bros., Wholesale Tailors, Inc., in soliciting the sale of and selling its products in interstate commerce through the medium of respondent Davis-Rogers Tailoring Co., Inc., offers for sale and sells its products, as hereinafter more particularly described, to the consumers or ultimate purchasers thereof, through agents or salesmen stationed or operating at various places in and throughout the several States of the United States. Prospective purchasers make and deliver, to such agents or salesmen, orders for such clothing, accompanied by a specified cash deposit, as hereinafter set forth, which orders are by such agents or salesmen forwarded to principal place of business of respondent, Davis-Rogers Tailoring Co., Inc., in the city of Chicago, State of Illinois, and when a prospective purchaser so makes and delivers such order, said respondent accepts the same, and thereupon and thereunder undertakes to sell and deliver the clothing so ordered to such purchaser at his place of residence, through the United States mails or otherwise.

Thereafter, and in pursuance of such order, respondent, Strauss Bros., Wholesale Tailors, Inc., furnishes and causes to be transported

from its said factory and principal place of business in the city of Chicago, State of Illinois, through the United States mails, parcel post, or otherwise, into and through the several States of the United States, and to be delivered to such purchaser at his place of residence, the clothing so sold to such purchaser, said purchaser paying to the agent and employee of the United States making such delivery, as set forth in the contract with respondent Davis-Rogers Tailoring Co., Inc., the balance of the purchase price still remaining unpaid, which balance is by said agent or employee remitted to said respondent at its office and principal place of business in the city of Chicago, and State of Illinois; the several purchasers of such clothing residing, being and remaining in and throughout the several States of the United States.

PAR. 5. Davis-Rogers Tailoring Co., Inc., as agent for respondent, Strauss Bros., Wholesale Tailors, Inc., and under direction of said individual respondents, conducts its said business in part as follows:

Said respondent solicits and procures orders for its said clothing through agents or salesmen stationed or operating at various places in and throughout the several States of the United States. Such agents or salesmen are supplied by said respondent with kits or outfits prepared for that purpose, said kits or outfits including illustrations of the clothing sold by said respondent, each such illustration bearing a model or fashion number; samples or swatches of cloth, each bearing an identifying number; said respondent's "iron clad guarantee;" order and measure blanks; and all needed or helpful articles and appliances for taking measurements of prospective purchasers and orders for said clothing.

From among the samples or swatches of cloth herein referred to, the prospective purchaser selects the particular sample or samples of which he desires the clothing so to be ordered by him to be made, and the model or fashion number. This information is then transferred by said salesman or agent to the order and measure blank, together with the names and addresses of said prospective customer and of the salesman or agent taking such order, and shipping instructions. The prospective purchaser is then measured by said salesman or agent for the particular article or articles of clothing desired, the measurements being written by said salesman or agent on the order or measure blank referred to. Said prospective purchaser, after paying to the said salesman or agent the required deposit, as hereinafter referred to, affixes his signature at the bottom of the said order and measure blank, with his post-office address, reciting the amount of the deposit paid said salesman or agent, and that the order is to be shipped C. O. D. for the balance remaining

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unpaid. Said salesman or agent furnishes said prospective purchaser with a receipt when the order is placed. The order in question, after being made out as aforesaid, is left by the prospective purchaser with the agent or salesman taking the same, to be forwarded, and is by said salesman or agent forwarded, to said respondent's said principal place of business in the city of Chicago, State of Illinois. Said respondent's established prices for its articles of clothing are as follows:

Article	Price	Deposit
3-piece suit.....	\$19.95	\$3.00
Suit and extra pair of trousers.....	26.50	4.00
Trousers.....	6.85	1.00
Topcoat.....	19.95	8.00

With an extra charge of \$2 where the chest or waist measure is 46 inches or over, and other provisions for such measurements when 50 inches or over. The deposit above referred to is the amount paid by the purchaser to such agent or salesman at the time such order is given, and is accepted by said agent or salesman as his commission or profit on such transaction. The difference, in each instance, between such deposit and the established price of the article of clothing so ordered by the purchaser is, as aforesaid, paid by the purchaser to said respondent, at the time of the delivery of the article or articles of clothing to said purchaser, through the medium of the agent or employee of the United States making such delivery, the purchaser paying, in addition to said difference, the postage charge on such shipment.

The clothing sold and distributed by said respondent, Davis-Rogers Tailoring Co., Inc., as herein set forth, is manufactured by respondent Strauss Bros., Wholesale Tailors, Inc., at its factory in the city of Chicago, State of Illinois, or is purchased by respondent Strauss Bros., Wholesale Tailors, Inc., as hereinbefore set forth, and after said clothing has been so manufactured or purchased, it is thereafter kept in stock by respondent, Strauss Bros., Wholesale Tailors, Inc., at its said principal place of business in the city of Chicago, State of Illinois, to be used in filling orders sent in from time to time by said agents or salesmen of said respondent Davis-Rogers Tailoring Co., Inc., as above set forth. All orders received by respondents are filled by selection from such clothing so kept in stock by respondent Strauss Bros., Wholesale Tailors, Inc., after causing necessary alterations to be made therein. The clothing sold by said respondents is not tailored to measure.

PAR. 6. In the course and conduct of its said business, as hereinbefore set forth, and for the purpose of aiding said agents and salesmen to procure from prospective purchasers such orders for the purchase of its said clothing, and of inducing the public and prospective purchasers to purchase and pay for said clothing, respondent Strauss Bros., Wholesale Tailors, Inc., through the medium of respondent Davis-Rogers Tailoring Co., Inc., has caused and now causes advertisements and descriptions of its said clothing to be inserted and made accessible to the public and to prospective purchasers through the medium of agents' sample or swatch books, order blanks, and by other means. In such advertisements and descriptions, said respondents, among others, make the following statements and representations:

On the outside of the swatch book appears an illustration of a seven-story building, under which the following words appear:

VISIT OUR MODERN DAYLIGHT PLANT WHEN IN CHICAGO
DAVIS-ROGERS TAILORING CO., INC.
LARGEST CONCERN OF ITS KIND IN THE WORLD

Similar illustrations of this building or plant appear on the labels pasted on respondent's swatches, and on the outer cover of respondent's "measure blanks and shipping instructions."

We guarantee: That every garment sent out by us will correspond to measurements ordered—and will be a perfect fit. We stand ready to alter clothes free of charge—or make entire new garments free—in the event that they do not fit.

We guarantee: That every Davis-Rogers suit or overcoat is tailored exactly like our newest fashion models * * *

We guarantee: That the workmanship and tailoring in every Davis-Rogers suit is of the very finest and most painstaking * * *

Orders are put into work soon as received, and can not be cancelled (appearing on customer's receipt, given at the time an order is taken).

Sample (in the swatch book) Makes a very handsome stylish suit.

Sample (in the swatch book) Makes a handsome suit for young and old.

Sample (in the swatch book) Makes a high-grade stylish appearing suit.

Sample (in the swatch book) Tailored into a handsome stylish topcoat.

The word "tailor" in the mind of the public signifies one whose occupation is to cut out and make, or repair, men's or women's outer garments, the name usually being restricted to one who makes such garments to order; and use by corporate respondents of the words Tailors and Tailoring as a part of their corporate names, taken in connection with the excerpts from respondents' advertising matter, previously quoted in this paragraph, and the fact that customers' measurements are taken by respondents' agents or salesmen—signifies in the mind of, and has the capacity and tendency to mislead

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and deceive the public and prospective and actual purchasers of respondents' clothing into the erroneous belief that respondents are engaged only in the business of making clothing to the measurements of the several purchasers whose orders they have solicited; and that the said clothing offered to them by or purchased by them through the medium of respondents' said agents or salesmen, is in fact tailor-made by said respondent, Davis-Rogers Tailoring Co., Inc., to their individual measure—when in truth and in fact the orders were and are filled with ready-made clothing carried in stock by respondent Strauss Bros., Wholesale Tailors, Inc., as hereinbefore set forth, and altered to fit the measurements of purchasers where necessary.

PAR. 7. Respondent, Strauss Bros., Wholesale Tailors, Inc., also, in soliciting the sale of and selling its products in interstate commerce, as hereinbefore set forth, advertised, and represented the cloth from which its products were made, in swatch books used by its said salesmen or agents in soliciting orders for its clothing, as:

We guarantee: That every yard of woollens is exactly as represented.

No. 3201—Fine silk inlaid worsted.

No. 3203—Handsome silk inlaid fine novelty worsted.

No. 3205—Fine silk inlaid worsted.

No. 3208—Handsome silk inlaid fine novelty worsted.

No. 3209—Fine worsted.

No. 3210—Handsome silk overplaid in fine novelty worsted suiting.

No. 3211—Beautiful silk inlaid fine decorated novelty worsted.

The word "worsted" in the mind of the public, signifies a yarn or fabric made wholly of wool; and the word "silk" in the mind of the public signifies, when applied to thread or textile goods, materials derived from the cocoon of the silkworm; and the use by said respondents of the words "silk" and "worsted" in designating certain samples of cloth, as aforesaid, signifies in the mind of the public that the samples thus designated are composed wholly of the product of the cocoon of the silkworm and of wool; and the use by said respondents of the word "worsted" in designating a certain sample of cloth, as aforesaid, signifies in the mind of the public that the sample thus designated is composed wholly of wool; when, in truth and in fact, the fabrics designated, as aforesaid, by the use of the words "silk" and "worsted" contain no product of the cocoon of the silkworm, and only a portion of wool, a substantial portion thereof being cotton; and the fabric designated, as aforesaid, by the use of the word "worsted" contains only a portion of wool, a substantial portion thereof being cotton; and the statements and representations so made by said respondents as hereinbefore

set forth in this paragraph have the capacity and tendency to mislead and deceive the public and prospective and actual purchasers into the erroneous belief that the clothing so offered for sale and sold by respondent is made of cloth or fabric composed either wholly of silk and wool, or wholly of wool, as the case may be; and that all statements and representations made by respondent as hereinbefore set forth, are true.

PAR. 8. A considerable portion of the public and many purchasers and prospective purchasers of men's clothing prefer and desire to purchase clothing which has been cut and made exclusively according to measurements of the several purchasers thereof, as distinguished from clothing cut from conventional or standard measurements and made up in advance, and kept in stock for sale to persons whom it may be found to fit.

In addition to respondents, there are persons, firms, and other corporations in the United States who manufacture or purchase men's ready-made clothing, or clothing not tailored to individual measurements, and who sell said clothing in interstate commerce, who do not, through any of the means hereinbefore described as employed by the respondent herein, or otherwise, seek to create or create the impression, among purchasers and prospective purchasers, that the clothing so made or purchased, and offered for sale and sold by them is, in fact, tailored to the individual measure of customers or prospective customers.

There are also, in the United States, persons, firms and other corporations selling in interstate commerce clothing which is, in fact, tailored to the individual measure of customers.

PAR. 9. A considerable portion of the public and many purchasers and prospective purchasers of men's clothing prefer, and desire to purchase clothing which is made of cloth or fabric that is composed entirely of wool, or of wool and silk, as the case may be, as distinguished from clothing made of cloth or fabric composed in whole or in part of some other material or ingredient.

In addition to respondents, there are persons, firms, and other corporations in the United States who manufacture or purchase men's clothing which is made of cloth or fabric not composed entirely of wool, or of silk and wool, as the case may be, and who sell said clothing in interstate commerce, who do not, through any of the means hereinbefore described as employed by the respondents herein, or otherwise, seek to create or create the impression, among purchasers and prospective purchasers, that the clothing so made or purchased and offered for sale and sold by them is, in fact, composed entirely of wool, or of silk and wool, as the case may be.

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There are also in the United States persons, firms, and other corporations who sell in interstate commerce clothing which is made of cloth or fabric composed entirely of wool, or of silk and wool, as the case may be.

PAR. 10. Respondent, Strauss Bros., Wholesale Tailors, Inc., in the sale and distribution of its ready-made men's clothing in interstate commerce through its distributing companies, Howard Tailoring Co., Hudson Tailoring Co., Mills & Hall, Strauss Bros., and United American Tailors, has employed and employs the same or similar methods employed by it in connection with respondent, Davis-Rogers Tailoring Co., Inc., as hereinbefore set forth.

PAR. 11. The acts of respondents as set out herein, have tended to induce and have induced, the purchase of men's clothing from respondents in reliance upon the erroneous belief that said clothing was made to the measurement of said purchasers, from cloth made wholly of wool, or silk and wool, as represented and have thus tended to divert trade, and have diverted trade, from and thereby injured competitors of respondents.

PAR. 12. The above acts and things done by the respondents are all to the injury and prejudice of the public and respondent corporations' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 27th day of April, 1931, issued and served its complaint upon respondents charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents thereafter on the 11th day of June, 1931, filed their answer to the complaint, and in said answer state that they and each of them waive hearing on the charges set forth in the complaint and desire not to contest the proceeding under the complaint herein.

Thereupon this proceeding came on before the Federal Trade Commission on such complaint and answer and the Commission having accepted and considered such answer and being fully advised in the premises,

It is now ordered, Pursuant to subdivision (2) of Rule III of the rules of practice heretofore adopted by the Commission, that respondents, Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, their officers, agents, representatives, servants, and employees, in the course and conduct of their business of selling and distributing men's clothing in commerce between and among the several States of the United States—cease and desist:

(1) From using the words "tailors" or "tailoring" in their corporate or trade names, unless and until all articles of said clothing, in their manufacture, are cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers thereof; provided that, when a substantial part of said articles of clothing is so cut and made, and the words "tailors" or "tailoring" are used by said respondents in their corporate or trade names, said words shall not be so used unless said trade or corporate names are immediately accompanied with some other word or words, displayed in type equally as conspicuous, clearly and unequivocally indicating that said articles of clothing are not cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers thereof, and that will otherwise clearly and unequivocally indicate that said articles of clothing are in part cut and made to or in accordance with conventional or standard measurements.

(2) From making or causing to be made any representation, statement or assertion, directly or indirectly, in any manner whatsoever, to the effect that any of its said articles of clothing are tailor-made or are cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers thereof, unless and until said articles of clothing, so represented, are in fact cut and made exclusively to or in accordance with the individual tailoring measurements of the respective purchasers; provided that, when part only of such articles of clothing are so cut and made, it shall be clearly and unequivocally disclosed in connection with all sales promotion activities connected therewith, that the certain other part or parts of such articles of clothing are not so cut and made, but are cut and made to or in accordance with conventional or standard measurements.

(3) From making or causing to be made any representation, statement or assertion, directly or indirectly, in any manner whatsoever, to the effect: (a) That any of its said articles of clothing are made of cloth composed entirely of wool, when such is not the case; or (b)

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that any of its said articles of clothing are made of cloth composed entirely of wool and silk, when such articles of clothing are not, in fact, made of cloth composed entirely of wool and of silk, the product of the cocoon of the silkworm; provided that, when such articles of clothing are made of cloth composed in part only of wool, or in part only of wool and silk, as the case may be, representations, statements or assertions shall be made clearly and unequivocally disclosing that fact.

It is further ordered, That respondents, Strauss Bros., Wholesale Tailors, Inc., and Davis-Rogers Tailoring Co., Inc., corporations, and S. A. Strauss and W. W. Strauss, individuals, shall, within 60 days after the service upon them of copies of this order, file with the Federal Trade 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 hereinabove set forth.

Syllabus

IN THE MATTER OF

TITUS INSTITUTE, INC., W. HARRY TITUS, INDIVIDUALLY, AND AS PRESIDENT OF TITUS INSTITUTE, INC., AND RALPH H. SINCLAIR

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

Docket 1681. Complaint, July 3, 1929—Decision, June 30, 1931

Where a correspondence course in physical development consisting principally of illustrations, with explanatory matter, depicting the founder performing various physical exercises and particularly featuring his personal, individual instruction and adaptation of the course to individual needs and requirements, was carried on and conducted by him for many years until his death, and advertised through pictures representing him as a young vigorous and athletic man, and describing in detail successful results accomplished by his method; and thereafter a corporation organized under the family name by said founder's son to carry on the business, and an advertising agent, closely associated with the conduct thereof and familiar with the circumstances pertaining thereto, without disclosing the death of said founder, whose experience, skill, and reputation as a physical instructor gave said family name its only significance or value in the business of physical instruction, or that individual instruction, or adaptation of the course to individual needs or requirements would be made by said son instead of aforesaid founder,

- (a) Made statements and representations in their advertisements in magazines implying that they were those of the founder of the business and that it was being conducted by him and he was giving his individual attention and instruction to purchasers in accordance with their individual needs and requirements;
- (b) Made statements and representations implying that he had awarded and was awarding large prizes in money to those making the greatest improvement under his direction and that purported checks depicted in advertisements as thus given, and guarantees were copies of checks actually signed and given by him for such purpose and of his actual guarantees, facts being that his purported signature had been appended to such checks and guarantees by the son in conducting the business in question through the corporate instrumentality above set forth;
- (c) Set forth "before and after" pictures including one of a certain individual, together with such statements as "one—two—three, just like that", "The boy you see above changed from a puny weakling into a physical giant", and falsely represented pictures depicted under the caption "before", "30 days after" and "60 days after" as truthfully reflecting the physical condition of the individuals exhibited before and after receiving instruction, and that apparent improvement and development were the result of their course, facts being that said individual at time of beginning course was a well-developed, sturdy man, disclosed by his application blank as a person of exemplary habits, who took systematic physical culture, the

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"before" picture was the result of a carefully planned conspiracy as a result of which the head of said individual was superimposed upon some puny body so as to present contrast shown between it and the genuine ("after") picture of said individual as an athletic person, in the full vigor of health and strength, and pictures in other instances were those of said son or his brother and reflected conditions of persons long prior to taking the course, or exhibited development resulting from a prolonged course of training and not accomplished in any such short period, if due at all to the course in question;

- (d) Falsely represented that they had awarded and would bestow \$1,000 upon pupils making the greatest improvement and set forth picture of aforesaid individual as winner of an annual prize, under the caption "You're next", together with such statements as "What do you think of him? \$1,000 in cash and solid gold medal * * * for the greatest improvement * * * Nation-wide contest proves another amazing demonstration of Titus training", " * * * Are you going to get the marvelous muscular development you see * * * Make that your New Year's resolution", facts being said individual, winner theretofore of such a prize offered and paid by a competitor, received no prize from them, but \$100 for permitting use of his name and aforesaid photographs and returned to them, as required, \$1,000 check, together with his endorsement, for their use in connection with their aforesaid false and misleading claims; and
- (e) Falsely represented that their course had the capacity to and would transform undeveloped, stoop-shouldered, flat-chested, scrawny individuals, or those otherwise lacking in physical health or vigor, into big muscled, powerfully built men and had done so almost overnight in the case of thousands and for many years, and that 20 minutes a day for 30 days sufficed to put layers of muscle like iron bands all over the body, facts being it was impossible through said course to develop a puny weakling into a physical giant within any brief period of time and that to bring about such development as represented in "before" and "after" pictures of aforesaid individual would require a prolonged course in physical training indicated as extending from one to three years;

With intent to mislead and deceive public into purchasing such course as and for one conducted and directed by said deceased founder, and with effect of appropriating good will entertained toward said founder among patrons and purchasers and prospective patrons and purchasers, and with capacity and tendency so to mislead said public to its injury and prejudice, and also into purchasing said course as and for one yielding the results in development and strength suggested by aforesaid pictures, and holding prize contests offering purchasers the possibility of receiving a \$1,000 reward or prize through achieving greatest physical development, and promising results indicated in 30 days, and to divert trade to them from said competitor who did award such prize to said individual, and to divert trade from and otherwise injure competitors truthfully describing their courses, conducting contests among their pupils, and actually awarding and paying substantial sums of money to those accomplishing the greatest improvement by means thereof:

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

Mr. James M. Brinson, for the Commission.

Mr. Michael M. Doyle, of Washington, D. C., and *Mr. Joseph W. Gottlieb*, of Brooklyn, N. Y., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Titus Institute, Inc., a New York corporation engaged in conducting a correspondence school in physical culture, with office and sole place of business in New York City, respondent W. Harry Titus, president and general manager of said corporation, organized by said respondent in order to provide a corporate agency for carrying on the school of physical culture established by said respondent's deceased father,¹ and respondent Ralph H. Sinclair, engaged in behalf of and in conjunction with said other respondents in the preparation of all the literature, including advertisements in magazines, pamphlets, leaflets, circulars, and illustrations setting forth the alleged merits or advantages of respondent's course to the public, with misrepresenting business identity, offering deceptive inducements to purchase, misrepresenting results of service offered, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, through false and fraudulent advertisements offering their said course, together with the appliances or devices included therewith, in maga-

¹ As alleged more fully in the complaint, respondent's father, one Henry W. Titus, known or designated as Prof. Henry W. Titus established about 1903 a school in the City of New York and State of New York for instruction in physical culture, chiefly by correspondence. His course of instruction consisted of certain illustrations of himself engaged in performance of various physical exercises, accompanied by communications from him containing explanations and directions for the successful application or use of such illustrated exercises by the purchaser, together with certain appliances or devices for muscular development to be employed in connection with the course of instruction. A booklet was distributed by him, among other means, for advertisement of his school among purchasers and prospective purchasers, containing a picture which represented him as a young, vigorous and athletic man, and describing the merits of and the successful results accomplished by his method of physical training, particularly his individual instruction, or adaptation of his course to individual requirements and needs. He conducted and maintained this school of physical culture until the year 1925, when he died. In 1927 his son, respondent W. Harry Titus, caused to be incorporated respondent Titus Institute, Inc., in order to continue the business established and maintained as aforesaid by Henry W. Titus deceased and, without disclosure of his death or of any change in the identity of the personnel of those offering for sale the Titus course of physical instruction, to appropriate the good will theretofore entertained by purchasers and patrons or by prospective purchasers and patrons toward Prof. Henry W. Titus.

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zines of general circulation in the various States, such as Physical Culture, Strength, Screen Land, Smart Set, and America's Honor, knowingly make false and misleading representations and statements to the effect that—

The representations and statements are those of Henry W. Titus who originally induced and conducted the Titus course of physical instruction, and is still conducting it and giving his individual attention and instruction to purchasers, in accordance with their individual needs, and who has awarded and is still awarding prizes to those making the greatest improvement in physical culture under his direction, and presenting contestants with large money rewards, fact being that said Henry W. Titus was already deceased for several years;

Checks or instruments represented as given in payment of said rewards and prizes, and displayed by respondents in their advertisements in booklets, pamphlets, leaflets, and magazines, as above set forth, in order to induce the purchase of said alleged Titus course, and as bearing the signature of said Henry W. Titus, are true copies of checks or instruments actually signed and given for such purpose by said Henry W. Titus, the facts being said Titus was already deceased, as above set forth, and his name was caused to appear on said alleged checks or instruments by respondent W. Harry Titus;

Certain guarantees of the efficiency of the course in question, in respondents' said advertisements, were over the purported signature of said Henry W. Titus, the facts being as above set forth;

Pictures in respondents' advertisements of their said course, under the caption "before", "thirty days after", and "sixty days after", truthfully represent the physical condition of the individuals depicted, before and after their instruction in the course involved, and show the improvement or development resulting to said individuals as a result of said course, the facts being that the various pictures were either not of the same individuals or were those of individuals at periods of their lives preceding their instruction by respondents, by one or more years, and that said individuals represent physical conditions and muscular development neither directly nor remotely attributable thereto, and that all of said pictures published by said respondents in magazines and otherwise were those of individuals associated with respondents or who had undergone no such course, but had been paid various sums by respondents for use of such pictures in respondents' advertising and publication of their course under the "before and after" captions, as above set forth;

Prizes of \$1,000 were given by respondents to pupils making the greatest improvement in their course, the facts being that respondents at no time had given any prizes in any legitimately conducted contest between purchasers of its course, but have from time to time selected individuals of approved physical development, due neither directly nor remotely to the alleged Titus course, to whom they have falsely pretended in their advertisements thereof to have awarded said \$1,000 prizes, and who, for \$100 or less, have allowed respondents to publish their pictures, together with copies of their indorsements on pretended checks for \$1,000, said respondents falsely representing the physical development and muscular growth of said persons, as published and displayed by them in respondents' advertisements, as the direct result of their course.

Respondents, further, as charged, falsely represented in their advertisements in magazines, booklets, leaflets, pamphlets, letters, and other advertising matter that their said course will transform undeveloped individuals and those who are stoop-shouldered, flat-chested, ungainly, weaklings or otherwise similar physically afflicted, or in other similar respects, as therein specified, physically afflicted or inadequate, into big-muscled, powerful built men, that almost overnight it has changed puny weaklings into physical giants; that such result has been accomplished for thousands of men; that it has transformed those of every size and condition into perfect physical specimens; that only twenty minutes a day for thirty days is required to put layer after layer of muscle on the body until said layers stand out like iron bands; and that the results accomplished by Titus and the Titus course have been called "miracles worked in muscle" and have been accomplished for many years, the facts being that respondents have not and can not through their said course, whether adapted or not to individual needs or through any other means, within the brief time represented, or in any time, accomplish any such transformation, development or improvement as claimed.

According to the complaint, the above and foregoing representations of respondents and each and all of them "have and has had and have and has the capacity and tendency to mislead and deceive the public into the purchase of the course of physical instruction offered for sale by respondents in the erroneous belief that it has been and is conducted and directed by Henry W. Titus, and that the bodily and muscular development and strength apparently possessed by the individuals whose pictures have been and are exhibited in the advertisements of respondents, have been and are the result of the course of physical culture offered for sale and sold

by respondents, and such representations and all of them have had the capacity and tendency to divert trade from and otherwise to injure competitors of respondents truthfully describing the courses of instruction in physical culture offered for sale by them"; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon Titus Institute, Inc., W. Harry Titus, individually and as president of Titus Institute, Inc., and Ralph H. Sinclair, hereinafter called respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered their appearance and filed answers, testimony and documentary evidence were received and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on such complaint, answers, the testimony and evidence received, briefs and arguments of counsel, and the Commission having duly considered the same now makes this its report in writing, and states its findings as to the facts with its conclusion drawn therefrom as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Titus Institute, Inc., is now, and has been since July, 1927, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and sole place of business in the City of New York in the State aforesaid. Its business has been and is the conduct of a correspondence school in physical culture. Its course in physical culture has been and is offered for sale and sold by respondent, Titus Institute, Inc., together with apparatus for use therewith, in commerce among and between the various States of the United States and when sold such course of instruction together with such apparatus has been transported from the place of business of respondent, Titus Institute, Inc., in the City and State of New York, to purchasers in the various States of the United States other than the State of New York and respondents and each of them have and has been and are and is in competition with individuals, partnerships,

and corporations engaged in the sale of correspondence courses of physical training or culture in interstate commerce. Respondent W. Harry Titus has been since its organization, and now is, its president and general manager.

Respondent Ralph H. Sinclair is an individual residing in the City of New York engaged in the advertising business, who, for several years last past, has prepared, and now prepares for, on behalf of, and in conjunction with respondents W. Harry Titus and Titus Institute, Inc., the literature, including advertisements in magazines, pamphlets, leaflets, circulars, and illustrations, which have been and are distributed by respondents Titus Institute, Inc., and W. Harry Titus among purchasers and prospective purchasers of the correspondence course of physical instruction offered for sale and sold by said respondents and through which the asserted merits or advantages of such course of instruction have been or are presented to the public.

PAR. 2. One Henry W. Titus established in 1903 a school in the City of New York and State of New York for instruction in physical development, chiefly by means of correspondence. He subsequently became known, and was designated, as Prof. Henry W. Titus. The course of instruction which he conducted consisted principally of illustrations of himself engaged in the performance of various physical exercises, which were accompanied by communications or letters of explanation from him which prescribed the method to be followed for the successful application or use of the illustrated exercises composing his course of instruction. There were also included in such course, appliances or devices for muscular development to be employed in connection with the course of physical instruction. Henry W. Titus distributed for the advertising of his school among purchasers and prospective purchasers, a picture which represented him as a young, vigorous, and athletic man, and which described in detail the successful results accomplished by his method of training. He particularly featured as an unusual element of efficiency for his course, individual instruction by him personally, and his adaptation of the course of instruction to individual requirements and needs. He maintained this school of physical culture until the year 1925 when he died.

Respondent W. Harry Titus continued to conduct it after the decease of his father, and in 1927, he caused to be incorporated respondent Titus Institute, Inc., and thereafter, without disclosing the death of Henry W. Titus, or the fact of any change in the identity of the personnel of those offering for sale the Titus course of physical instruction, he continued to conduct under the name of Titus Insti-

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tute, Inc., the business established, maintained, and developed by his deceased father. By means of such failure to disclose the death of Henry W. Titus, and of advertisements in magazines, pamphlets, leaflets, circulars, and illustrations, distributed as aforesaid among purchasers and prospective purchasers of the course of instruction, respondent Titus Institute, Inc., and W. Harry Titus have appropriated and utilized the good will entertained by purchasers and patrons, or by prospective purchasers and patrons toward the deceased Prof. Henry W. Titus. Nowhere in any such advertising literature have purchasers or prospective purchasers been advised that the individual instruction or the adaptation of the course of instruction to individual requirements or needs, is or will be rendered by respondent W. Harry Titus instead of by Prof. Henry W. Titus, whose experience, skill, and reputation as a physical instructor have given the name of Titus its only significance or value in the business of physical instruction.

Respondent W. Harry Titus, ever since the organization of respondent Titus Institute, Inc., has supervised, and controlled said respondent company which has been, and is merely the corporate agency or instrumentality by and through which respondent W. Harry Titus is enabled to sell the Titus course of instruction with himself as its manager and director, as and for a course of physical instruction conducted by his father Henry W. Titus.

It has been and is the practice of respondent Ralph H. Sinclair on behalf of and in conjunction with respondents Titus Institute, Inc., and respondent W. Harry Titus to cause publication and distribution of the literature and advertising matter of respondents in magazines, pamphlets, leaflets, and circulars, illustrations and otherwise, and he has prepared and caused to be published each and all of the advertisements of respondents Titus Institute, Inc., and W. Harry Titus with the knowledge and expectation that such literature was being distributed and would be distributed among and would be read by purchasers and prospective purchasers of the Titus course of instruction in the various States of the United States, and that such literature, including advertisements in magazines and newspapers, would be used and was being used to induce the purchase of such course of physical instruction, including the physical appliances to be used in connection therewith.

Respondent Ralph H. Sinclair has been at all times since the organization of respondent Titus Institute, Inc., and now is, closely identified with respondents Titus Institute, Inc., and W. Harry Titus, and has been and is familiar with the facts and circumstances involved in, or relating to the representations and statements in each

and all of the advertisements prepared by him and published and distributed by respondents in the course of such business. He has also, in connection with said respondent Titus Institute, Inc., and W. Harry Titus, caused to be transported from the City of New York and State of New York to places of business, in other States than the State of New York, plates, photographs, or pictures for use in the advertisements by respondents Titus Institute, Inc., and W. Harry Titus of their said course of physical instruction, in various magazines.

PAR 3. It has been and is the practice of respondents to offer for sale and sell their said course of physical instruction by means of advertisements prepared as described in paragraph 2 hereof in magazines in general circulation in the various States of the United States, such as Physical Culture, Strength, Screen Land, Smart Set, and America's Honor, containing representations and statements implying that they have been and are made by Henry W. Titus who originally introduced and conducted the Titus course of physical instruction; that he is conducting it, is giving his individual attention and instruction to purchasers of the course in accordance with their individual needs and requirements; that he has awarded and is awarding prizes to those making the greatest improvement in physical culture under his direction; that he has been and is presenting contestants for such prizes, large rewards in money; that checks or instruments purporting to be checks displayed by respondent Titus Institute, Inc., in advertisements of their course of instruction, and represented as given in payment of rewards and prizes bearing or purporting to bear the signature of the said Henry W. Titus, have been and are true copies of checks actually signed and given for such purpose or purposes by the said Henry W. Titus; that certain guarantees of the efficiency of such course of physical training appearing in the advertisements of respondent under the purported signature of the said Henry W. Titus have been and are the actual guarantees of Henry W. Titus. His son, respondent W. Harry Titus, has caused and causes the name of Henry W. Titus to appear subscribed to said pretended checks and guarantees, copies of which have been published by respondents in their booklets, pamphlets, leaflets, and in their advertisements, in aforesaid magazines, in order to induce the purchase of said alleged Titus course of physical culture.

Respondents have made in such advertisements false representations and statements to the effect that certain pictures which respondents Titus Institute, Inc., and W. Harry Titus have published in advertisements of their course of physical instruction in the mag-

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azines aforesaid under the captions "before", "thirty days after", and "sixty days after" have truthfully represented or reflected the physical condition of the individuals exhibited therein before their instruction in the Titus course of physical culture, and the physical condition of the same individuals thirty days and sixty days after undertaking it, and that the apparent improvement and development of such individuals, from their condition before such instruction, have been and are due to, or the result of, the Titus course of physical culture.

It has been falsely represented in the aforesaid advertisements of respondents that they have awarded to, and bestowed prizes upon pupils making the greatest improvements in their Titus course of physical training in the sum of \$1,000. Their method in this connection is evidenced by the following language appearing in their advertisements under the pictures and pretended pictures of one Gregory Paradise:

YOU'RE NEXT

Here's my prize winner for 1927! What do you think of him? \$1,000 in cash and solid gold medal awarded to Gregory Paradise, for the greatest improvement in physical development. Nation-wide contest proves another amazing demonstration of Titus training.

ALL ABOARD FOR 1928!

Well, boys, 1927 is past and now we're starting our 1928 prize contest. Are you going to get the marvelous muscular development you see in Gregory Paradise's pictures? Make that your New Year's Resolution!

Respondents have also falsely represented in their said advertisements that the course of physical instruction offered for sale by them has the capacity to, and will transform undeveloped, stoop-shouldered, flat-chested, scrawny, or ungainly individuals, or those having flabby flesh, or sickly weaklings into big muscled, powerfully built men, and that almost overnight such course of physical instruction has changed puny weaklings into physical giants, and that such result has been accomplished by Titus training for thousands of men; that thousands of every size and condition have been transformed by such course of instruction into perfect physical specimens; that all such course of physical instruction requires is the employment of twenty minutes every day for thirty days to put layer after layer of muscle all over the body until they stand out like iron bands; that the results accomplished by Titus and the Titus course of physical instruction have been generally called miracles in muscle, and have been accomplished for many years.

In truth and in fact all of the representations of respondents relative to the participation of Henry W. Titus in the conduct of respondent, Titus Institute, and the development and training of those purchasing a Titus course of physical culture were made with the full knowledge that he had died in 1925 and with the deliberate purpose of misleading the public into the belief that he was living and that he was actually in control of the Titus Institute and to induce purchase of the course in reliance on such belief.

The pictures which respondents have published and which purport to portray the results accomplished through their course of physical training have not fairly or truthfully represented the condition of the persons they purport to portray before or after such course of instruction. The pictures, in some instances, have been pictures reflecting the condition of the individual or individuals long prior to, rather than immediately before, taking the Titus course of physical culture; and in other instances they have been pictures of respondent, W. Harry Titus, or his brother, and have exhibited development which if due in any measure to the Titus course had not been accomplished in 30 or 60 days, or in any short period of time, but had been or was the result of a prolonged course or period of training.

Illustrative of the methods followed by respondent are the pictures published in magazines and distributed in pamphlets and circulars among purchasers and prospective purchasers of their course of instruction in physical development, which respondent represented to be the pictures of one Gregory Paradise. These pictures appeared either side by side, or one above the other. Under or over one appeared the word "before" and under or over the others appeared the word "after". In connection with and below these pictures appeared among other statements the following: "One—Two—Three—Just like that, the boy you see above changed from a puny weakling into a physical giant. Looks like magic doesn't it? But that's just an example of what Titus training had done for thousands upon thousands of men". The "boy" seen above represented as the "puny weakling" below whose pretended picture the word "Before" appeared, existed only in the imagination of respondents. The picture was the product of a carefully planned conspiracy between respondents, W. Harry Titus, Ralph H. Sinclair, and some unknown photographer. It was produced by the superimposition of the photograph of the head of Gregory Paradise on the photograph of some unknown and puny individual, in such a way that the cut and pictures resulting therefrom presented a composite consisting of the head of Paradise and the undeveloped body of another

person. The other pictures presented the real Paradise as a robust and athletic man, in the full vigor of health and strength. These pictures were displayed as illustrative of his full development in 30 or 60 days after taking the Titus course. At the time respondents published these pictures there was in their possession the enrollment blank of Gregory Paradise when he began the Titus course of training in which he disclosed the measurements of his body. These measurements clearly revealed him as a man with a well developed and sturdy body, and represented him as a man of exemplary habits, who took systematic physical culture.

Gregory Paradise was not entitled to win a prize or reward in any amount for making the greatest improvement in the Titus course nor did he receive from respondent the prize of \$1,000 in cash as published by them on account of his success in the Titus contest for 1927.

There was no real contest conducted by respondents in 1927; there was no comparison by any jury as advertised by respondents of the improvement made by Gregory Paradise with the improvement made by other pupils of the Titus course of instruction.

He is, and in 1925 was, a resident of Nashua, N. H., who enrolled as a pupil in a correspondence school of physical culture, then and now conducted by Earl Liederman with his principal place of business in the City and State of New York. He was a contestant for and was awarded by Earl Liederman a prize of \$1,000 on account of his development by means of the Liederman course of physical culture. In the fourteenth edition of a book entitled "Muscular Development", published and distributed by Earl Liederman, there was published in 1925 a picture of Gregory Paradise of Nashua, N. H., and beneath the picture appeared the following:

The winner of the grand prize of \$1,000 cash, solid gold medal and diploma in the Earl Liederman 1925 International Improvement Contest. Mr. Paradise was a small-boned, weak young man on the day he enrolled and Earl Liederman's system coupled with his own determination made him the muscular athlete he is to-day in eight months.

Paradise received from Liederman \$1,000, the medal, diploma, and was entertained by him in New York.

Some time in December, 1927, respondent W. Harry Titus removed from his files pictures representing individuals of undeveloped and weakly types and with these in his possession proceeded to Nashua, N. H., where Gregory Paradise resided. He exhibited to Paradise these various pictures removed by him as aforesaid from the files of respondent Titus Institute.

Paradise selected from them a picture which he said could be used to represent his condition prior to the time he took the Titus course of physical culture and on the back of the photograph so selected he wrote the following: "I hereby state that this is how my body looked before taking this course. You have the full privilege to use this as you see fit. Gregory Paradise." After writing this language on the back of the photograph, respondent W. Harry Titus gave Gregory Paradise a check for \$100, and handed him a check for \$1,000, which he caused Paradise to indorse and return to him. He then returned to New York and in conjunction with respondent, H. Ralph Sinclair, he caused to be prepared the composite picture presenting the body of the individual pictured on the photograph selected by him and Paradise, and the head of Paradise, and published in magazines in connection with the announcement that Paradise was the winner in the 1927 contest, and that \$1,000 in cash had been given to him. Respondent W. Harry Titus caused Paradise to indorse the check for \$1,000 in order to publish it in the magazines used by respondents to advertise results of the contest, or using the language of respondent W. Harry Titus had it so indorsed that he "might have it for photographic purposes". When questioned by the management of the physical culture magazine regarding the integrity of this transaction he exhibited this check as evidence of the fact that \$1,000 had actually been given to Paradise.

In truth and in fact it is impossible by means or through use of the Titus course of physical culture to develop a puny weakling into a physical giant within 30 days or 60 days, or within any brief period of time to accomplish the development of the human body from the condition illustrated in the "before" picture published as that of Gregory Paradise, into the condition of the bodies represented in the published pictures of Gregory Paradise described as 30 or 60 days after. Development of an individual such as represented in the "before" picture of the pretended Gregory Paradise into the condition of the "after" pictures of Paradise would require a prolonged course of physical training or culture, of from one to three years according to the evidence.

PAR. 4. The above and foregoing representations of respondents have had, and have, and each of them has had, and has, the capacity and tendency to mislead and deceive the public to its prejudice and injury, into the purchase of the course of physical instruction offered for sale by respondents in the erroneous belief that it has been and is conducted and directed by Henry W. Titus, and that the bodily and muscular development and strength apparently possessed by the individuals whose pictures have been and are

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exhibit in the advertisements of the respondents, have been, and are the result of the course of physical culture offered for sale and sold by respondents, and that there have been, and are conducted by respondents Titus Institute, Inc., and W. Harry Titus, legitimate contests in the course of which rewards in the sum of \$1,000 have been and will be given the purchaser making the greatest physical improvement in the course of instruction by respondent; that the remarkable development apparently accomplished by Gregory Paradise, through respondents' course of training, was actually so accomplished, and was characteristic of the course so that in 30 days inches would be added to the muscles and puny weaklings converted into physical giants; and that in contests legitimately conducted, they would have the chance of winning a prize of \$1,000 by making the greatest physical improvement.

The representation by respondents that the remarkable development and physical strength acquired by Gregory Paradise was due to the Titus course of physical culture when in fact it had been acquired through and was due to the course of physical culture conducted by Earl Liederman, a competitor of respondent, had the capacity and tendency to divert trade to respondents from Earl Liederman and otherwise to injure him and his business. Each of the above and foregoing representations described in paragraph 3 hereof has had and has the capacity and tendency to divert trade from and otherwise to injure competitors of respondents who truthfully have described their course of instruction in physical culture offered for sale by them and who have conducted or conduct contests among their pupils and have awarded or actually do award and deliver substantial sums of money to pupils accomplishing the greatest improvement by means of such courses of physical culture.

CONCLUSION

The acts and practices described in the foregoing findings as to the facts have been, and are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the method and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of re-

spondents, testimony, evidence, briefs and arguments of counsel; and the Commission having filed its report stating its findings as to the facts and its conclusion that respondents have been, and are, violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is therefore ordered, That respondent, Ralph H. Sinclair, cease and desist from preparing for use by respondents, Titus Institute, Inc., and W. Harry Titus, and respondents Titus Institute, Inc., and W. Harry Titus, individually and as president of Titus Institute, Inc., cease and desist from using, in connection with offering for sale or selling in interstate commerce a course in physical culture or appliances for use in connection with physical culture, advertisements, or any written or printed matter containing representations, statements, or words implying or importing that Henry W. Titus is living, or has any connection with the conduct of respondent Titus Institute, Inc.; or containing any fabricated photograph, picture, or cut, or composite photograph, picture or cut falsely appearing to represent the physical conditions of pupils of respondent Titus Institute, Inc., before or after taking its course in physical culture, or any genuine photographs, pictures, or cuts of pupils of respondent Titus Institute, Inc., showing physical development or strength acquired by such pupil during other or longer periods of time than indicated, or by means of, or through other courses of physical culture than the Titus course, or by, or through any other agency or agencies than respondents Titus Institute, Inc., or W. Harry Titus; or containing any representations or statement that prizes, in the sum of \$1,000, or in any other sum, are being awarded to pupils making the greatest improvement in physical culture while undergoing respondents' course of physical culture, unless respondents Titus Institute, Inc., and W. Harry Titus, have actually awarded and delivered such prizes to pupils making the greatest improvement in their course of physical culture; or containing any representations or statements to the effect that by means of, or through, the Titus course of physical instruction, puny weaklings may be converted into physical giants within thirty days, or within any brief period of time.

It is further ordered, That respondents file a written report with the Commission within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

IN THE MATTER OF
THE BREITBART INSTITUTE OF PHYSICAL CULTURE,
INCORPORATED

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

Docket 1609. Complaint, Apr. 24, 1929—Decision, Sept. 21, 1931

Where a corporation engaged in the sale of a course of physical culture, together with its so-called "Muscle Building Apparatus" for use in the fourth and subsequent lessons, and essential therefor,

- (a) Set forth names of nationally known athletes in advertisements of its course with such statements as "It's easy the Breitbart way. The methods used by the world's champions will also do the trick for you", and employed photographs of well-known athletes and of other persons showing exceptional physical development resulting from the practice of physical exercises, as illustrative of benefits conferred by said course, and published written statements by aforesaid individuals ascribing their physical development to its exercises, notwithstanding fact that some of the world's champion athletes referred to attained their physical development and condition entirely apart from any knowledge or practice of its lessons or apparatus, and many others either owed their physical development in no degree to said course or exercise or in part to instructions received elsewhere; with the tendency and capacity to mislead and deceive members of the public into believing that the individuals thus depicted had accomplished their physical development through physical exercises performed pursuant to its said course, and into purchasing the same in reliance upon such mistaken belief, and with effect of so doing;
- (b) Featured and depicted in its advertisements a number of nationally known athletes as composing its so-called Advisory Council and represented its said course as built around said council and said athletes as giving their personal attention and interest to the course concerned and to the individual cases of the different pupils, and represented one of said council, whose signature as physical director it affixed to letters, form letters, lessons, etc., as being a famous athlete, trainer, and outstanding authority on physical education and corrective exercise, and as being its athletic director, having personal charge and supervision of its course, notwithstanding the fact that the central figure depicted in the representation of such council had died prior to said corporation's organization, and said trainer, etc., and the others included never received any compensation from it and had no connection whatever with it or its course other than consenting to use of their names and photographs as members of said so-called council; with the capacity and tendency to mislead and deceive members of the purchasing public into believing that as subscribers to such course they and their individual cases would have the benefit of the skill and experience of the famous athletes composing such supposed Advisory Council;
- (c) Included in its corporate name the name of a former widely known "strong man" and professional athlete who had himself formerly conducted under his own name a course in physical training and depicted

aforesaid council grouped about said deceased athlete and included his name in connection therewith, and affixed his signature to checks purporting to be his personal checks, represented as payable at his place of business, and sent to prospective subscribers for their use as credits against its regular price; with the capacity and tendency to mislead and deceive members of the public into believing aforesaid well-known athlete and strong man to be still alive and taking a personal and active interest and part in the business concerned and in the instruction given to purchasers of its course, and to induce their purchase thereof in reliance upon such mistaken beliefs;

- (d) Represented the price expected to be received and received as a sum less than that actually charged, through exacting prices in excess of the sum mentioned in letters and enrollment blanks, upon the ground of covering transportation charges on its aforesaid "Muscle Builder", notwithstanding the fact that said letters, etc., stated that the figures therein mentioned and agreed to by the pupil or subscriber covered everything and that "*The original cost is the last.* You do not have to spend another cent for anything else; the course is complete including the Breitbart Progressive Muscle Builder * * *" and subscribers had made all payments called for by said letters, etc., and delayed delivery of said apparatus and the fourth and subsequent lessons for periods ranging from a week or more to more than a year due to the making of such demands, purchasers' objections thereto, and the lapse of time brought about in the making of adjustments and remittance of the charges when finally accepted; with the tendency and capacity to mislead and deceive purchasers into believing that aforesaid sums constituted its real price for the course and apparatus, and included charges for transportation thereof, leaving nothing more to be paid, and into purchasing said course in reliance upon such erroneous belief; and
- (e) Falsely represented and offered said course as requiring about three months to complete, in weekly lessons, fact being it delayed delivery of the fourth and subsequent lessons and the necessary "Muscle Builder" for periods ranging from a week to a year or more, due to failure to keep on hand a sufficient number of such devices for delivery in due course, though manufacturers of necessary parts were in a position at all times to make delivery to it of sufficient quantities to fill all its requirements within from four to six weeks, and purchasers or subscribers had paid all money required to entitle them to delivery of said apparatus; with the tendency and capacity to mislead and deceive purchasers into believing that it was able and willing at all times to deliver its course and apparatus so as to permit completion in about three months at the rate of a lesson a week, as represented, and into buying such course and apparatus in reliance upon such mistaken belief, and with the effect of so doing; and of depriving purchasers in a great number of instances not only of the use and benefit of said course beyond the fourth lesson, and of such apparatus for aforesaid periods, but also during such times of the benefits of instruction in the performance of physical exercises pursuant to competitors' courses, purchase of which they were prevented from making due to having bought course herein concerned; With the tendency and capacity to divert trade and with the effect of causing trade to be diverted from its competitors, and causing competitors to be otherwise injured:

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Held, That such practices, under the conditions and circumstances set forth were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Edward E. Reardon for the Commission.

Mr. Morris Meyers and *Mr. Samuel Meyers*, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of a book of instructions for the performance of physical exercises for the development of the body, and of a certain appliance for use in performing certain of its said exercises, and with principal place of business in New York City, with misrepresenting business status, affiliations, and service, using false and misleading testimonials, offering deceptive inducements to purchase and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in offering its course to the public by means of letters and advertisements in newspapers represents that there is affiliated with its book or course a so-called Advisory Council consisting of prominent athletes, mentioning such names as Tex O'Rourke, Jack Dempsey, and Doctor Roller, who meet daily and give their attention to the problems presented, making available their advice and supervision to the pupils, the fact being that the so-called council does not meet at any time as such, the individual members do not confer with one another with reference to the exercises or instruction, and most of them have had nothing to do with the book or course of instructions or advice to subscribers or purchasers thereof.¹

Respondent further, as charged, published alleged recommendations of its book or course including pictorial representations from alleged purchasers or subscribers attributing their physical development to the performance of the physical exercises prescribed in the book or course, the fact being that the persons concerned had already accomplished their development as a result of exercises previously received from sources other than respondent; delivered to subscribers and purchasers of its course offered at time to time at special prices, less than the full course and an appliance of less effectiveness in value than that represented as a part of this special

¹ Certain representations of respondent relative to the Advisory Council, alleged in the complaint, appear below in the "Findings," at p. 221.

offer, refusing in some cases to deliver the appliances referred to, in others to deliver any appliance whatever and in still other instances refusing to send or unreasonably delaying the sending of the course or appliance; and in connection with special offers of the book or course sent prospective subscribers, or purchasers, checks purporting to be the personal checks of Siegmund Breitbart payable at respondent's place of business in New York as part payment of the price of the book or course, the fact being that the individual in question was deceased long before the time that such use was made of the checks in question purporting to have been signed by him.

According to the complaint the aforesaid acts and things "have the tendency and capacity to mislead and deceive members of the public; into the belief that an Advisory Council of prominent athletes, experienced in the performance and practice of physical exercises, take an active and personal part in preparing and supervising the lessons or instructions sold by respondent, in book form or as a course of instruction, with the object of suiting particular exercises and instructions to the needs or requirements of individual purchasers or subscribers; into the belief that the persons, whose pictures of their physical development and whose recommendations of respondent's said book or course are published by respondent, have received the physical development represented in such pictures and recommendations by reason of having bought respondent's said book or course of instructions and having performed the physical exercises contained in said book or course at the instance of respondent; into the belief that purchasers of or subscribers to respondent's said special offers of its said book, or course of instructions, at said special and lower price than the regular price would receive the same book or course of instructions and the same apparatus or appliance that they would receive if they paid the said regular price; into the belief that Siegmund Breitbart, deceased, was actually alive, personally connected with respondent's organization, issuing checks, to be used as a cash credit in payment of respondent's said book or course and otherwise taking a personal interest in the purchasers or subscribers to respondent's said book or course of instructions; and, relying upon such belief, into purchasing or subscribing to respondent's said book or course of instructions in preference to the books or courses of instructions offered and sold to the public by respondent's competitors"; all to the injury and prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, The Breitbart Institute of Physical Culture, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the brief for the Commission, and counsel for the respondent having waived the filing of a brief and oral argument having been waived by counsel for the Commission and for the respondent, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Breitbart Institute of Physical Culture, Inc., is a corporation organized November 2, 1925, under the laws of the State of New York, and at all times since the date of its organization it has had and now has a place of business in the City of New York in said State.

PAR. 2. During all the times above mentioned the respondent has been and now is engaged in the business of the sale of a course of instruction consisting of 12 lessons in the performance of physical exercises for the physical development of the human body and its parts called Breitbart Physical Culture Course for Health, Strength, Muscle.

PAR. 3. The respondent includes with, and as part of, its said course of instruction an appliance consisting of two or more steel leaves with steel handles, the handles being finished with hard rubber grips. The appliance is called a Muscle Building Apparatus, and was and is designed and intended by respondent to be used by the purchasers of or subscribers to its course in connection with the performance by them of the exercise prescribed in the fourth, and subsequent lessons.

The balance of the lessons of respondent's course after the third lesson are useless to a subscriber or purchaser of the course without the Muscle Building Apparatus, as all of the exercises in the fourth and subsequent lessons of the course are to be done with the use of the apparatus.

PAR. 4. During all the times above mentioned the respondent has offered its course of lessons, including therewith its said Muscle Building Apparatus for sale by means of advertisements which respondent has caused to be published in newspapers and magazines and circulated among the public throughout the various States of the United States and in foreign countries and by means of letters and printed pamphlets, books and circulars sent by respondent from the State of New York through the United States mails to various members of the public, prospective purchasers, located in States other than New York, in the District of Columbia, and in foreign countries.

PAR. 5. During all the times above mentioned the respondent has sold its said course of lessons and apparatus to members of the public, purchasers thereof, located in foreign countries, in the District of Columbia, and in the various States of the United States other than the State of New York, and it has caused its course of lessons and apparatus when so sold by it to be transported from the State of New York to, into and through States other than New York, to the District of Columbia and to foreign countries, and delivered to the said purchasers.

PAR. 6. During all the times above mentioned other individuals, firms, and corporations, hereinafter called sellers, located in the various States of the United States have been engaged in the business of the sale of courses of instruction in physical exercises for the development of the human body and its parts to members of the public, purchasers thereof, located in the said various States other than the State of the respective sellers, in the District of Columbia and in foreign countries, and the said sellers, respectively, have caused their said courses of instruction when so sold by them to be transported from the State of the seller or the State of origin of the shipment, to, into and through States other than the State of the seller or the State of origin of the shipment to the District of Columbia and to foreign countries to the said purchasers.

The respondent during the times above mentioned has been and still is in competition in interstate and foreign commerce with said other individuals, firms, and corporations in the business of the sale of its course of lessons including its said apparatus.

PAR. 7. Prior to the organization of the respondent corporation there was a corporation in existence in the State of New York, engaged in the business of the sale throughout the United States of a course of instruction in the performance of physical exercises for the physical development of the human body, under the name, Siegmund Breitbart, Inc., of which one Siegmund Breitbart was the president. The said Siegmund Breitbart was in his lifetime a pro-

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fessional athlete, and before his death he was widely known and advertised among the public of the United States and in foreign countries, as a "strong man" by reason of his ability in lifting or moving heavy weights and performing athletic feats that particularly required unusual muscular development and strength.

PAR. 8. Siegmund Breitbart, above mentioned, died in the latter part of the month of October, 1925, and the respondent was almost immediately thereafter organized as a corporation on November 2, 1925, and engaged in business as above stated.

PAR. 9. One Frederick S. Engel, residing at 604 West One hundred and twelfth Street, New York City, was one of the promoters of the organization of respondent corporation. The said Engel has been manager of respondent's business at all times since its organization.

The only regular employees of respondent during 1928, 1929, and 1930 were the said Frederick S. Engel, president and manager of respondent's business, one female clerk who received \$25 a week for her services and during 1929 another female clerk who received \$25 per week.

PAR. 10. The respondent, in the usual course of its business, caused advertisements referred to in paragraph 4 hereof to be published in magazines as above set forth, in which, among other things, the names of a number of nationally known athletes were mentioned in connection with statements, among others, as follows:

It is easy the Breitbart way

The method used by the world's great champions

will also do the trick for you.

These advertisements also contained many general statements concerning the benefits of physical exercises, and sometimes exhibited the photographs of nationally known champion athletes.

The said advertisements were made by respondent for the purpose of soliciting inquiries from the public for further free literature. The respondent offered in said advertisements to send free by mail its 84-page book entitled "Muscular Power", to those who sent in their names and addresses on a coupon attached to the advertisement for that purpose.

PAR. 11. The respondent sent to those who answered its advertisements referred to in paragraph 10 hereof, its said book, Muscular Power.

Respondent's said book contains among other things a description of respondent's course of instruction and its said muscle-building apparatus.

The said book also contains a group photograph composed of the photographs of six nationally known athletes, including four former

national champions in the professional athletic sports of boxing, pugilism, and wrestling, and a photograph of a nationally known matchmaker and promoter of professional contests in boxing, pugilism, and wrestling, grouped around a photograph of said Siegmund Breitbart, who is dead.

The group photograph of said eight individuals is entitled "Breitbart Advisory Council."

PAR. 12. Among the statements made by the respondent, contained in its said book, *Muscular Power*, are the following:

The Advisory Council became the head and heart of the Breitbart Institute. Every day the different problems are gone over and every pupil gets real consideration and attention. One good head is not as good as eight good heads—so figured Breitbart, and on that theory he got the Advisory Council imbued with his method and secrets, so that to-day it functions smoothly, efficiently, and harmoniously, producing such marvelous results that the testimonials from thousands of Breitbart pupils keep coming in a constant stream more wonderful and more astounding than could be imagined.

* * * * *

Suppose Tex O'Rourke, Jack Dempsey, Dr. Roller—the whole Breitbart Advisory Council—went to your house every day for a few weeks to instruct you how to build up your health, strength, muscles, and vitality, giving you their best knowledge, experience, and instructions, divulging their numerous secrets on training and body development, would this be worth the price of the Breitbart course? Yes, indeed; it would! Well! That is just what you get when you enroll for the Breitbart course—you get the advice of the greatest aggregation of the master minds of muscle ever gathered together in one enterprise since the world began.

Among other statements made by respondent to purchasers and prospective purchasers of its said course were the following:

Breitbart pupils get personal supervision from the very start to finish. Each lesson is designed to the pupil's individual needs and requirements and for his own particular benefit. All correspondence, lessons, and letters are carefully read. The pupil gets the wonderful course in physical education under personal direction of the Great Advisory Council all the time, right in the privacy of the home, just as if they were present personally talking to each pupil and telling him what to do.

PAR. 13. After the respondent sent its book, *Muscular Power*, to members of the public as above set forth, it sent follow-up letters to those who did not immediately send respondent their enrollment or subscription to its said course of instruction. The said follow-up letters contained, among others, statements as follows:

I have been watching the mails for your enrollment but as yet it hasn't come in * * *.

Here's an opportunity you can't afford to pass up! You'll always be glad you enrolled for the Breitbart System because you're going to get great results under the guidance of the famous Breitbart Advisory Council—all World's Champions and Internationally famous Physical Culture experts and authorities.

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PAR. 14. In form letters to prospective subscribers or purchasers the respondent made statements regarding the said Advisory Council, the course, the period of time the course would require, and the interval of time in which the lessons would be sent to them by respondent, among others, as follows:

The Breitbart Advisory Council of the World's leading authorities assures you positive results from the very start. * * *

A course will be outlined for you which will cover a period of about three months. * * *

During this period you will receive one lesson each week, consisting of a set of progressive exercises * * *.

PAR. 15. The business of respondent in the sale of its said course of instruction to members of the public mentioned and referred to above, the said purchasers of said course during the times above mentioned, was a personal service rendered or to be rendered said purchasers on the part of respondent and those of respondent's agents and employees including the said Breitbart Advisory Council and said Tex O'Rourke, under whose personal charge and supervision respondent represented that its said course of instruction was given.

PAR. 16. The respondent represented that said Tex O'Rourke named as one of its said Advisory Council was a noted athlete and trainer and an outstanding authority for years on physical education and corrective exercises and that he was the athletic director of respondent in charge of the assignment of its lessons and instructions for the performance of exercises in its said course of instruction.

The assignment of lessons of respondent's said course to purchasers thereof and the instructions to them for the performance of the exercises in said course was not done by the said Tex O'Rourke but by the said Engel who had charge of and directed the course of instruction and gave the instructions to the said purchasers of said course for the performance of the exercises thereof and signed the name of said Tex O'Rourke to all correspondence of respondent with its said purchasers 'concerning the instructions of its said course.

PAR. 17. During all the times aforesaid, all correspondence on the part of respondent with purchasers and prospective purchasers or subscribers to respondent's course of instruction, including that in which instruction concerning the course and physical exercises referred to therein was given to purchasers or subscribers has been conducted, on respondent's part, and answered by the said Engel or by the said female employee under his direction. All form letters sent by respondent to purchasers or prospective purchasers were usually signed by said female employee by stamping them with the

facsimile of the signature of one Tex O'Rourke as physical director. All other said correspondence of respondent was usually signed by said Engel with the name Tex O'Rourke, as physical director.

PAR. 18. Some of the world's champion athletes whose names were used in respondent's advertisements, mentioned and referred to in paragraph 10 hereof, to the knowledge of respondent and its said president and manager, Frederick S. Engel, never received any instruction from respondent and have never practiced any exercises for their physical development pursuant to respondent's said course of instruction or by means of respondent's said Muscle Builder Apparatus.

Said world's champions attained all of their physical development and condition entirely apart from any knowledge of or practice in lessons or exercises contained in respondent's said course of instruction, all to the knowledge of respondent and to the knowledge of its said president and manager, Frederick S. Engel.

PAR. 19. The individuals represented by respondent as forming the said Breitbart Advisory Council, excepting Siegmund Breitbart who was dead, gave their consent, respectively, to the use of their names and photographs as members of the said Breitbart Advisory Council and further than giving their consent to such use of their names and photographs they never had any connection with the respondent's said business, or with respondent's said course and never consulted together regarding respondent's lessons to the subscribers to or purchasers of respondent's said course. The said individuals never either individually, or one or more of them collectively, supervised any of the lessons or any instruction given by respondent or proposed to be given by respondent to any of the subscribers or prospective subscribers or to any of the purchasers or prospective purchasers of the respondent's said course of instruction.

The said individuals never individually or collectively received any compensation from respondent for the said consent to the use of their names and photographs or for any other account whatever.

The said Breitbart Advisory Council, during all the times above mentioned, to the knowledge of respondent and of said Engel was and is a council in name only.

PAR. 20. During all the times above mentioned the respondent published in its said book, Muscular Power, photographs of certain individuals that exhibited the degree of their physical development to be much greater than in the case of the average person and to be the result of the practice of physical exercises. Many of the said photographs were of well-known athletes and their physical development as shown in the said photographs was, in some instances not due in any degree to respondent's course of instruction or the per-

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formance of any exercises by said individuals pursuant to respondent's said course of lessons. In certain other instances the physical development of others of the said individuals as shown in the said photographs was partly the result of physical exercises performed by the said individuals pursuant to instructions received from others and was not due as to such part of their said physical development in any respect or degree to respondent's course of instruction or the performance by said individuals of any exercises pursuant to respondent's said course of lessons.

The said photographs published as aforesaid were representations that the physical development exhibited therein was accomplished by means of respondent's said course and the publication of the said photographs by respondent was for the purpose of recommending to members of the public respondent's course of instruction and to induce and persuade members of the public to purchase or subscribe to respondent's course of instruction for the price in money at which the course was offered to them by the respondent. The said recommendations of respondent's course of instruction by means of photographs of the physical development of individuals who are and have been represented by respondent to have obtained their said physical development in consequence of instruction contained in respondent's course have been published not only in respondent's book, *Muscular Power*, but they have also been published in newspapers and magazines, including those newspapers and magazines mentioned and referred to in paragraph 4 hereof.

The respondent has also included in its advertisements in newspapers and magazines written statements which have represented that the physical development of the said certain individuals was the result of exercises performed pursuant to respondent's said course, when in fact the physical development of such individuals had already been brought about either partly or wholly by the performance of physical exercises by said individuals which were performed by them pursuant to instructions received from others than respondent.

PAR. 21. During the times above mentioned the respondent has from time to time offered its said course for sale to the public at special prices lower than the said regular prices and in connection with its said special offers of its course, the respondent has sent to prospective purchasers thereof checks purporting to be the personal checks of said Siegmund Breitbart, who was deceased at the time, and purporting to be signed with his signature and payable in money at Siegmund Breitbart, Inc., in New York City. The said checks were sent by respondent to be used by the said pur-

chasers or subscribers as credit for part payment in money for respondent's said course.

PAR. 22. In respondent's letters, mentioned and referred to in paragraph 13 hereof, to prospective purchasers of its course of instruction the respondent during the times above mentioned and referred to stated regarding the price of its course of instruction, among other things, as follows:

All you are asked for the Complete Course and wonder-working apparatus is \$25 cash or \$29 on the part payment plan. \$5 down and the balance \$3 weekly; either way is agreeable.

At the end of the said follow-up letters sent by the respondent was a form for enrollment as a subscriber as follows:

BREITBART INSTITUTE OF PHYSICAL CULTURE, 3 EAST
14TH STREET, NEW YORK CITY, N. Y.

I hereby enroll as your pupil and want you to send me your COMPLETE COURSE together with your progressive MUSCLE BUILDER apparatus, and here-with make payment of \$25 in FULL or \$5 in part payment, the balance to be paid at the rate of \$3 weekly until the full amount of \$29 is paid.

Name_____ Date_____

City_____ State_____

Please underline the payment you wish to make.

A copy of the above form for enrollment was also contained in respondent's book, Muscular Power, and on the page in said book immediately before the pages occupied by the said enrollment blank the statement, among others, appeared as follows:

The original cost is the last. You do not have to spend another cent for anything else; the course is complete, including the Breitbart Progressive Muscle Builder * * *.

PAR. 23. The respondent's said course of instruction was designed and intended by respondent and, during the times above mentioned was offered by respondent to purchasers or subscribers, members of the public, to cover a period of instruction in the lessons of the course of about three months, during which time subscribers to or purchasers of the course were to receive from respondent one lesson a week beginning with their subscription or purchase of the course and said apparatus.

During all the times mentioned and referred to herein the respondent sold its said course and apparatus to members of the public, purchasers thereof and the said purchasers bought the same on the said representations of respondent and on the understanding and agreement between respondent and said purchasers, respectively, that the respondent's said course would take about three months to complete; that respondent would send said purchasers one lesson of the course each successive week beginning with the purchase of the

course; that respondent would send its said apparatus to said purchasers with the fourth lesson of said course, and that the price of said course and apparatus included no further cost in money to said purchasers than the amount stated by respondent which did not include any charge for delivering the lessons of the course or said apparatus by mail or otherwise to said purchasers.

PAR. 24. The respondent represented to purchasers that the price of its said course and apparatus was the price which was stated by respondent to said purchasers and subscribers on its said enrollment forms or its said special prices mentioned and referred to respectively in paragraphs 22 and 21 hereof.

During the times above mentioned, in those instances where it had received payment in cash in full from the purchaser with his order or subscription for its course, and also in those instances where respondent had sold its complete course and apparatus to purchasers or subscribers on the partial payment plan, and from whom the respondent had received the sums agreed upon for the part payment and the weekly payments due at the time respondent was to send the fourth lesson of its course and its said apparatus to purchasers or subscribers, the respondent made it its usual and regular practice to demand and receive from each of the said purchasers or subscribers, respectively, a further sum of money for the charges of transportation of the said Muscle Builder Apparatus to them by mail or otherwise, before it would deliver the apparatus or further lessons due.

The true price of respondent's course to purchasers or subscribers included and was always intended by respondent to include, without knowledge thereof by said purchasers or subscribers, charges for delivering its said apparatus to purchasers throughout the United States and in foreign countries by mail or otherwise.

PAR. 25. Among the parts of which respondent's said Muscle Builder Apparatus was made were certain tempered steel leaves and the respondent did not have sufficient of the said steel leaves during the years 1928, 1929, and 1930 with which to assemble its said Muscle Builder Apparatuses in sufficient quantity to supply the said purchasers of its course during those years, and in consequence thereof respondent did not have sufficient of said apparatuses for that purpose during said times.

On November 18, 1930, the date of the last day of the taking of testimony in this proceeding, there were, among others, 76 persons who had bought from respondent its said course of instruction, including S. B. Singh, Chief Justice of Jind State, India, who subscribed for the said course in September, 1929, all of whom had paid respondent in full the amount of the purchase price or

subscription for its said course and all of whom, with the exception of the said Chief Justice Singh, had subscribed for or purchased respondent's said course at various times during the period from February 14, 1930, to said November 18, 1930.

None of the said 76 purchasers had received respondent's Muscle Builder Apparatus and substantially all of them had received only three lessons of respondent's course of instruction on said November 18, 1930, notwithstanding substantially all of said purchasers had demanded of respondent delivery of its said Muscle Builder Apparatus long prior to said last mentioned date and in accordance with the terms of their contract of purchase respectively of respondent's said course and apparatus.

PAR. 26. Manufacturers in the United States of the steel leaves mentioned above, used by respondent as parts of its said apparatus, are and have been able during all the times above mentioned to make and deliver to respondent in from four to six weeks after receipt of an order from respondent said steel leaves in sufficient quantity to fill all the requirements of respondent for said steel leaves for its Muscle Builder Apparatuses.

PAR. 27. During the times above mentioned respondent has failed to deliver its said apparatus or any lessons of its said course subsequent to the third lesson to many of the purchasers or subscribers of its said course, mentioned and referred to in paragraphs 24 and 25 hereof, notwithstanding said purchasers or subscribers had paid in full within the time for delivery to them of the apparatus and the fourth lesson of said course all sums of money due therefor including in addition the amounts demanded by respondent from said purchasers for the transportation charges on the delivery of the said apparatus to the said purchasers.

PAR. 28. During the times above mentioned respondent has failed to deliver and has delayed delivery of the fourth and subsequent lessons of its course and of its Muscle Builder Apparatus, to purchasers which was necessary to be used by them with the fourth and subsequent lessons, for periods of time varying from a week or more to more than a year because respondent did not obtain and have sufficient apparatuses during said times for delivery thereof with the fourth lesson which was regularly due to be furnished to said purchasers within approximately four weeks after they had bought respondent's course.

During the times above referred to, the delivery of the fourth and subsequent lessons of its course and the delivery of said apparatus has been delayed for similar periods of time because of respondent's demands for the payment by purchasers of transportation charges

in advance of delivery of the Muscle Builder Apparatus, and the consequent lapse in the time of delivery of said lessons and apparatus caused by respondent's demands, by the objections of purchasers to them, and for adjustments thereof and the remittance of the amount to respondent of said charges when finally accepted by the purchasers.

Purchasers of respondent's said course in consequence of the failure of respondent to deliver the said apparatus and lessons as above set forth were in a great number of instances during said times deprived not only of the use and benefit of respondent's said course beyond the fourth lesson and of the use of respondent's Muscle Builder Apparatus for periods of time varying from a week or more in some instances to more than a year in others, but they were deprived thereby for such periods of time from the benefits of instruction in the performance of physical exercises pursuant to courses of such instruction sold by competitors of respondent which they were prevented from buying because of the purchase of the course sold by respondent.

PAR. 29. The representations of respondent, above set forth, by means of the use of the checks for the payment of money purporting to be signed by Siegmund Breitbart, deceased, which were given by respondent to purchasers as credits for payment by them on the price of the course, and by means of the use of photographs published in respondent's said advertisements representing Siegmund Breitbart, deceased, as a member of its said Advisory Council, to the effect that said Siegmund Breitbart, deceased, a former well-known athlete, was a living person and was taking a personal and active interest and part in the business of respondent and in the instruction given to purchasers of its course; and the representations of respondent, above set forth, by means of the use of group photographs of certain well-known athletes, entitled Breitbart Advisory Council, which included the photograph of the dead Siegmund Breitbart, that respondent's course of instruction was given to purchasers under the personal, actual and active interest of the members of said council were each and all false representations on the part of respondent, and the said representations had the tendency and capacity to mislead and deceive members of the public into the belief that said representations were each and all of them true, and in reliance in that belief into purchasing respondent's course of instruction.

PAR. 30. The representations above set forth, by the use of photographs in advertisements of respondent in connection with the sale of its course of instruction, showing the physical development of certain persons together with statements contained in said adver-

tisements to the effect that said persons had obtained their physical development pursuant to instructions in the performance of physical exercises received from respondent, when in fact the physical development of said persons was not accomplished by means of physical exercises pursuant to any lessons or instructions received by them from respondent or its said course, had the tendency and capacity to mislead and deceive members of the public, purchasers of respondent's said course, and they did mislead and deceive said members of the public during the aforesaid times into the belief that the individuals whose photographs were so published had accomplished their said physical development by means of physical exercises performed pursuant to respondent's course of instruction, and, in reliance upon that belief, into purchasing respondent's course of instruction.

PAR. 31. The statements and representations above referred to made by respondent to purchasers during all the times above mentioned, that certain sums of money were the respondent's prices to them for its course of instruction and Muscle Builder Apparatus when in fact, at the times it sold its said course and apparatus to said purchasers, respectively, the respondent, without notice and without knowledge thereof on the part of the purchasers, secretly, intended to include and did include in the prices for its course and apparatus to said purchasers, respectively, further sums of money for charges of transportation of the apparatus to them, were each and all of them false statements and representations and falsely represented the true, regular and customary prices of respondent's course and apparatus to purchasers.

The said statements and representations had the tendency and capacity to mislead and deceive and they did mislead and deceive purchasers into the belief that the said certain sums were the real prices for the said course and apparatus; that the said prices included and covered charges for transportation of the course and apparatus and that no further sum or sums were to be paid by purchasers for respondent's course and apparatus, and in reliance upon that belief into purchasing the respondent's course of instruction.

PAR. 32. The representations of respondent during the times above mentioned, in offering its course of instruction and apparatus for sale and in selling the same to members of the public as a course to be completed in about three months at one lesson per week, taken in connection with the practice of respondent in failing to deliver the fourth and subsequent lessons of its course and its said apparatus at the times when delivery of the same was due to the purchasers, were each and all false representations that respondent was able and willing at all times to perform its contracts of sale of its course and

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apparatus with purchasers thereof and the said representations had the tendency and capacity to mislead and deceive and they did mislead and deceive purchasers of respondent's course and apparatus into the belief that the respondent was able and willing during all of said times to obtain and to deliver the lessons of its said course and its said apparatus to purchasers thereof, and in reliance upon such belief into purchasing respondent's course of instruction and apparatus.

PAR. 33. The practices and representations of the respondent mentioned and referred to in paragraphs 29 to 32 hereof, inclusive, are and have been unfair methods of competition in interstate and foreign commerce, and they each and all have the tendency and capacity to divert trade, and they each and all have caused trade to be diverted from competitors of respondent and have caused respondent's competitors to be otherwise injured.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate and foreign commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answer of the respondent filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent above named, The Breitbart Institute of Physical Culture, Inc., its agents and employees, in the business of the sale in interstate or foreign commerce of printed or written lessons or instruction in the performance of physical exercises for the development of the human body do cease and desist:

1. From representing to the public in the United States and foreign countries by means of photographs and printed or written statements published in advertisements in newspapers, magazines, or other publications or by oral statements or in any other way, that any person or group of persons is connected with or associated with respondent as an advisor or in an advisory capacity or in

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other personal relationship to purchasers of respondent's lessons or instruction in the performance of physical exercises, unless and until such person or group of persons is actually, and in good faith, connected with or associated with respondent and is, in good faith, actually engaged in such advisory capacity or personal relationship to said purchasers to the extent and in the manner represented by respondent.

2. From representing to the said public in any way that Siegmund Breitbart, deceased, is a living person and connected or associated with respondent's said business.

3. From publishing photographs of any person or persons, showing their physical development in connection with the sale of respondent's lessons or instruction in physical exercises, unless such persons have accomplished their physical development pursuant to lessons or instruction in the performance of physical exercises received from respondent, or unless such photographs are accompanied by a statement clearly setting forth the source of the lessons or instruction in physical exercises received and followed by such persons.

4. From representing to the members of the said public in advertisements or in printed, written, or oral statements, or in any other way, that the real, true, regular and customary prices demanded of purchasers and received by respondent for its course and Muscle Builder Apparatus are certain stated sums of money, which sums are exclusive of transportation charges on delivery of the course and apparatus to purchasers, when the real, true, regular and customary prices demanded of purchasers and received by respondent for its course and apparatus includes a further and additional sum or sums for the charges of transportation of the same to said purchasers.

5. From representing in written or printed statements in advertisements or in oral statements or otherwise to the members of the said public that respondent is able to deliver and will deliver its lessons or instruction in physical exercises and its Muscle Builder Apparatus within a reasonable time or within a stated certain or approximate time to purchasers when, at the time such representations are made by respondent, it either does not intend to deliver or it knows or has reasonable grounds for knowing it is and will be unable to obtain and deliver the said lessons or instruction or apparatus to purchasers within a reasonable time or within the said certain or approximate stated time.

It is further ordered, That the respondent, The Breitbart Institute of Physical Culture, Inc., shall, within 30 days after the service upon it of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

IN THE MATTER OF
**WAUGH EQUIPMENT COMPANY, ARTHUR MEEKER,
 FREDERICK W. ELLIS, J. B. SCOTT**

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

Docket 1779. Complaint, Apr. 3, 1930.—Decision, Sept. 21, 1931

Where a corporation engaged in the manufacture of draft gears and in the sale of aforesaid necessary cushioning and shock absorbing devices to railway companies, private car lines, car builders, and others for use on their rolling stock, and including among its large stockholders persons representing important interests in two of the great packing companies; and two individuals, (1) for some thirty years employees of one of said packing companies, and respectively executive vice president, and vice president in charge of traffic, controlling the movement of some 7,000 private cars operated by said packer, and the routing and the allocation of some 275,000 carloads a year, and (2) large stockholders in said corporation through subsequent purchase, and prior agreement to use the influence possessed by them through control of aforesaid traffic in securing favorable reception for said corporation's representatives in soliciting railway companies to purchase its said gears, and in bringing about such purchases;

- (a) Used the volume of traffic of said packing company and/or its subsidiaries, highly prized and eagerly and insistently sought by the railway companies, and controlled as aforesaid, to induce and compel such companies to purchase said corporation's draft gears in preference to competitors' products of equal or higher quality through promising, assuring and shipping traffic of said packing company and its subsidiaries, or of an increased volume thereof, over their lines, and through threatening to withdraw and withdrawing such traffic, contingent upon their purchasing or failing to purchase said products; and

Where the aforesaid general officers,

- (b) Cooperated with and assisted such corporation and its officers, agents and employees in the sale and distribution of said gears and other equipment to railway companies through utilizing their position in said packing company to induce or compel officials of said companies to give undue preference to gears and other railway equipment made and/or sold by said corporation, through promises of traffic from said packing company and/or its subsidiaries, and through threats of withdrawal thereof, should said companies fail to purchase such gears or other equipment;

With the result that sales of said practically unknown gear increased in a few years from less than 1 per cent of those sold for new freight equipment to over 35 per cent and passed those of competitors, and with an undue tendency to suppress competition between aforesaid corporation and its competitors and to create a monopoly in the sale and distribution of draft gears and other railway equipment, through creation and use as above set forth of a coercive and oppressive weapon, preventing customers solicited by it and its competitors from exercising their free will and judgment in determining the most efficient device and that best suited to their needs at the lowest net cost over a period of time, and in the injection thereby of an unfair and abnormal element into the competitive field concerned, tending to reduce efficiency and economy in production and sales methods of

competitors, to give the concern controlling the largest volume of freight traffic an unfair advantage more than offsetting higher efficiency in production and sales methods of competing concerns controlling no such traffic, and to force all competitors either to abandon the field involved, or compete through gifts of stock or other valuable consideration to employees of corporations controlling and directing heavy volumes of traffic unrelated to the industry in question, and thus hinder and restrain freedom of competition in said industry's natural, customary and prevailing channels of trade:

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

Mr. Everett F. Haycraft for the Commission.

Mr. Edward M. O'Bryan, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Waugh Equipment Co., a Maine corporation engaged in the manufacture of railway equipment appliances and supplies, and, particularly, draft gears and centering devices, and in the sale thereof directly or indirectly through sales agents to railway companies, freight and passenger car builders, and others, and with principal office and plant at Depew, N. Y., and with branch offices in New York and Chicago, and respondent Meeker, executive vice president of Armour & Co. for ten years prior to January 1, 1928, respondent Ellis, vice president in charge of traffic of said company,¹ and respondent Scott, his assistant and general manager of said company's car lines, and large sockholders in said Equipment Co.,² with cooperating to use and using coercively and oppressively

¹ As alleged in the complaint Armour & Co., an Illinois corporation with outstanding capital stock of \$50,000,000, principal offices and slaughtering plants in Chicago and 26 or more branch slaughtering plants in other sections of the United States and one of the largest meat-packing concerns in the world, ships or causes to be shipped, directly and through its numerous subsidiaries, large quantities of meat products and by-products from its various plants and other factories to their more than 500 distributing depots, or branch houses, in the principal towns and cities, of the United States, and to other distributors, in various sections of the country, utilizing for this purpose more than 7,000 refrigerator and other cars owned by it, or its subsidiaries, "causing said cars to be transported over the lines of the various railway companies of the United States," and, together with its subsidiaries, negotiating with said companies with respect to the transportation of said products, through its traffic department located at its Chicago office, the annual volume of said products transported over the lines of said railway companies amounting to approximately 275,000 carloads.

² As alleged, said individual respondents own and/or control, along with other officials and employees of Armour & Co., the majority of respondent corporation's common stock, and control, in the case of the last two, the traffic routing and allocation of Armour & Co., with its 7,000 private cars and its shipments of some 275,000 carloads a year, said respondents having acquired their stock as a result of the taking over by respondent corporation of the business of the old Waugh Draft Gear Co., about Aug. 1, 1924, and their agreement to use their influence through control of aforesaid traffic, much of which was competitive and eagerly and insistently sought by the railway companies, in bringing about the purchase by said companies of said corporation's draft gears.

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said individuals' control of large volumes of eagerly sought competitive business, and official positions, to solicit and secure business, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth and more particularly in the sale of a draft gear, in cooperation with respondents Meeker, Ellis, and Scott, acting in pursuance of their agreement or understanding to use their influence in its behalf, "has sought to induce and compel, and has induced and compelled various railway companies to purchase draft gears and other railway equipment manufactured and/or sold by said respondent corporation in preference to draft gears and other equipment of equal or higher quality³ manufactured and sold by competitors by the following methods:

"(a) By promises and assurances of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and its subsidiary corporations;

"(b) By promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Armour & Co., and its subsidiary corporations; and

"(c) By threats of withdrawal of freight traffic from the lines of said railway companies by said Armour & Co. and its subsidiary corporations, if said railway companies would not purchase the said draft gears and other railway equipment manufactured and/or sold by said respondent corporation."

Respondent individuals, as charged, pursuant to the aforesaid agreement or understanding "and at the request of the officials and promoters of said respondent corporation, have cooperated with and assisted the said respondent corporation in the sale and distribution of its said draft gears and/or other railway equipment to various railway companies," as aforesaid, "particularly by utilizing their official positions in the said Armour & Co. to induce and compel the

³ As alleged, products made and sold by the old Waugh Draft Gear Co. included a draft gear known under the trade name "Waugh," which "was obsolete and not suitable for use on freight cars, and which had been sold in limited quantities in previous years by the said Waugh Draft Gear Co. to a very few railway companies, and at the time of the organization of the said respondent corporation the said Waugh Draft Gear Co. was not conducting its business at a profit, and the sale of its said gear had substantially diminished because it did not meet the strict specifications and requirements of the railway companies of the United States."

Complaint further alleges in this connection that "respondent corporation has, since the date of its organization, purchased and acquired licenses to manufacture other draft gears for use on freight and passenger cars, some of which were in use while others were not yet established or recognized as efficient draft gears," and that "respondent corporation * * * since the date of its organization until on or about January 1, 1927, sold and distributed draft gears under the said trade name of 'Waugh,' but since said date said respondent corporation has sold and distributed, and now sells and distributes, various sizes and types of draft gears under the trade name of Waugh-Gould."

officials of railway companies to give undue preference to draft gears and/or other railway equipment manufactured and/or sold by the said respondent corporation by means of promises of freight traffic from said Armour & Co. and its subsidiary corporations, and threats of withdrawal of said traffic, if the said railway companies would not purchase draft gears and/or other railway equipment manufactured and/or sold by said respondent corporation."

Such alleged acts and things done by respondents, as charged, are all to the prejudice and injury of the public and competitors of said respondent corporation, "individuals, firms, and corporations located in the various States of the United States * * * engaged in the manufacture or assembly of draft gears and other railway equipment, and in the sale and distribution thereof to the various railway companies and other concerns in the United States on the basis of quality and price alone," and unduly tend to suppress competition between said respondent corporation and competing manufacturers, and to create a monopoly in said respondent corporation in the sale and distribution of draft gears and other railway equipment, and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 9, 1928, issued and thereupon served, as required by law, upon Waugh Equipment Co., Arthur Meeker, Frederick W. Ellis, and J. B. Scott, respondents above named, in which said complaint it is charged that respondents have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondents, having filed their answers herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, the briefs having been filed on the part of the Commission and the respondents, and counsel for the Commission and the respondents having been heard in oral argument and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Waugh Equipment Co. is a corporation organized under the laws of the State of Maine in August, 1924, with its principal office and plant located in Depew in the State of New York and with sales offices in New York City, Chicago, Cleveland, St. Louis, Los Angeles, Anniston, Alabama, and Montreal, Canada. This respondent corporation is engaged in the manufacture of railway equipment, particularly draft gears, and in the sale of said products through sales agents to railroad companies, freight and passenger car builders, private car lines and any users of draft gears. Its products when manufactured and sold are shipped from the point of manufacture in Depew, N. Y., to purchasers or users thereof located in various States of the United States other than the State of New York. The said respondent corporation is in competition with manufacturers and distributors of draft gears located in various States of the United States who sell and distribute their products in and among the various States of the United States.

Arthur Meeker, for ten years prior to January 1, 1928, was one of the executive vice presidents of Armour & Co. and for a period of from 25 to 30 years prior to January 1, 1928, had been connected with and in the employ of Armour & Co., his headquarters being located in the city of Chicago.

Frederick W. Ellis is a vice president of Armour & Co. in charge of traffic and for 30 years had been in charge of the traffic department of Armour & Co. under varying titles. During this entire period he has been in direct charge of the direction, routing, and allocation of the large traffic of Armour & Co. and its subsidiaries.

John B. Scott, general manager of Armour Car Lines and first assistant to Frederick W. Ellis, has been in the employ of Armour & Co. in one or both of these positions for 11 years. Respondents Ellis and Scott are charged with and have direct control of the equipment and maintenance of the cars belonging to Armour & Co.

PAR. 2. Armour & Co. with its subsidiaries, as is well known, are large meat packers with headquarters and a large plant in Chicago, Ill., and plants in Kansas City, Kans., Omaha, Nebr., and 16 other points in the United States. Into these plants from various sections of the country a heavy volume of livestock, poultry, and other products move, and from these plants a heavy volume of fresh meats of all kinds, canned meats, fertilizers, and other by-products move to purchasers thereof and to approximately 400 distributing branches of Armour & Co. located in various States of the United States. Much of this traffic is competitive as between two and often more

railroads, its routing by their respective roads is constantly, eagerly, and insistantly sought and the traffic department of Armour & Co. is daily solicited by the traffic departments of one or another of the railroads for business. A large percentage of the commodities shipped by Armour & Co. is of a highly perishable nature and requires refrigeration in transit. To care for this exigency the Armour Car Lines were established by Armour & Co. to own and operate some 7,000 cars in which its products are transported, and in addition to these cars makes use of the cars of the various railroads. The livestock and fresh meat traffic require unusual expedition in movement. The rate structures are complex and require a wide knowledge and a high degree of skill in order to obtain the best results for the shipper and consignee. In order to secure the very best service and avail itself of the best rates under the published tariffs, Armour & Co., many years ago established a traffic department with headquarters in Chicago which controls, allocates, and directs the routing of the products of Armour & Co. so as to best serve its interests. This department has grown with the business, which business now amounts to approximately 275,000 carloads per year.

PAR. 3. All railroads, in order to operate must have draft gears. Each freight or passenger car must have two and each locomotive at least one.

A draft gear is a cushioning and shock-absorbing device that serves two purposes on a car—either freight or passenger. One is to provide sufficient give or free movement to permit the locomotive engineer taking up the slack in the train, the second purpose being to serve as a shock absorber to protect the cars and the lading from damage that might otherwise be caused by heavy impact blows received by the various cars on the road or in switching.

In the year 1902 there was organized, by one J. M. Waugh, under the laws of the State of Illinois, a company known as the Waugh Draft Gear Co. with headquarters in Chicago, which sold draft gears described as the Waugh Gear. Its draft gear was used to a limited extent on four western railroads and to a substantial extent on one railroad for both freight and passenger equipment, although no sales for new freight equipment were made to the railroad subsequent to 1918.

In March, 1924, a contract was entered into with the Armour Car Lines for the sale of a substantial number of Waugh Gears over a period of time. During the period from 1910 to 1921, both inclusive, sales for draft gears manufactured by the Waugh Draft Gear Equipment Co. for both freight and passenger equipment amounted to approximately \$800,000. During the period from Jan-

uary 1, 1921, to July 31, 1924, its sales amounted to approximately \$6,000.

There have been two general types of draft gears in use on the various railroads of this country during the past 10 years—namely, the spring type and the friction type. In the spring type, either a coil or plate spring is used to absorb the shocks, while in the friction type, a number of blocks of steel and iron appropriately arranged rubbing together absorb the shocks. In most friction types a coil spring is also utilized to assist in this process. The Waugh Draft Gear Co. manufactured the plate spring type.

Prior to the year 1922 or 1923 the Westinghouse Air Brake Co. controlled the patents on the frictional type of gear, but after the expiration of these patents many manufacturers entered the business of manufacturing that type of draft gears. Because of the heavy freight traffic, the railroads required a draft gear which was more sturdy than the spring type and which could endure a longer period of time. With the increase in the tonnage capacity of all freight equipment and the use of heavier locomotives and heavier and longer trains the spring type of gear was not found to give the service and protection to freight cars which the friction type could furnish, although for passenger use it was satisfactory. Many draft-gear manufacturers who had, prior to the expiration of the Westinghouse patents manufactured and sold only the spring type of gear enlarged their plants and began to manufacture the frictional type of draft gear. This the Waugh Draft Gear Co. was apparently not able to do because of its financial condition brought about by patent litigation and the changing business conditions.

PAR. 4. In the spring of 1924, J. M. Waugh, owner of the majority of the capital stock of Waugh Draft Gear Co., entered into negotiations with A. J. Pizzini, of New York City, which negotiations culminated in the organization by Pizzini and one T. E. Bragg, a stock promoter, of a company known as the Waugh Equipment Co., the respondent corporation herein. Waugh Equipment Co., when organized, proceeded to issue 2,000 shares of preferred stock and 7,000 shares of common stock, of which amount all the preferred stock and 2,000 shares of common stock were issued to the former stockholders of the Waugh Draft Gear Co. and 5,000 shares were originally issued as promotion stock to Messers. A. J. Pizzini and T. E. Bragg, the promoters of the respondent corporation, without money consideration.

Some time between June and September, 1924, the exact date not being determined, A. J. Pizzini and T. E. Bragg, promoters of the respondent corporation, divided their promotion stock of the Waugh

Equipment Co., and gave one-third of that stock or 1,666 shares of common stock to respondents, Arthur Meeker, F. W. Ellis, and J. B. Scott—666 shares going to Meeker, 666 shares to Ellis, and 334 shares to Scott—as consideration for an agreement or understanding entered into by and between respondents, Arthur Meeker and F. W. Ellis and Messrs. Pizzini and Bragg, promoters of the respondent corporation, whereby respondents Meeker and Ellis agreed and promised to use their influence acquired through long years of contact with railroad officials, and particularly the influence of respondent Ellis, to advance the interest of the respondent, Waugh Equipment Co., by obtaining hearings for officers or salesmen of that company, when necessary, and further, to use their influence with the officials of the railroads, particularly the traffic officials and through them the executive and other departmental officials of the railroads, to solicit and secure orders for the draft gears sold by the Waugh Equipment Co. The influence which they agreed to exert was that influence which had been acquired, and was then, and is now, possessed by them by virtue of the large volume of competitive traffic of Armour & Co. and its subsidiaries, which traffic had been for years and was at the time of the making of this agreement, and is now, controlled and directed by respondent, F. W. Ellis.

Said agreement or understanding was entered into by respondents Arthur Meeker and F. W. Ellis without the knowledge of other officials and stockholders of Armour & Co., except F. Edson White, president of said corporation.

On or about February 2, 1927, T. E. Bragg sold his one-third share in the promotion stock of the respondent corporation, Waugh Equipment Co., amounting to 1,666 shares for \$40,000 cash, the purchasers of said stock being the Whitehouse Investment Co., an investment trust created and controlled by F. Edson White, president of Armour & Co., for the benefit of his family, which purchased 1,000 shares, respondent Meeker who purchased 266 shares, respondent Ellis who purchased 266 shares, and respondent Scott who purchased 74 shares. Subsequently, respondents Meeker and Ellis have made additional purchases of the common stock of the respondent corporation, Waugh Equipment Co., until the record as of May 1, 1930, shows respondent Meeker owns 57 shares of preferred stock and 1,069 shares of common stock of said corporation and respondent Ellis as of record May 1, 1930, owned 1,069 shares of common stock in said corporation.

Just prior to December 1, 1929, the total holdings of employees and officials of Armour & Co., including respondents Meeker, Ellis, and Scott, was 3,749 shares of common stock out of a total of 7,000 shares outstanding. On or about December 1, 1929, respondent corporation,

Waugh Equipment Co., increased its outstanding capital stock to 8,666 shares, issuing the additional 1,666 shares to George A. Hood, trustee for the heirs of the late G. F. Swift, generally known as the Swift Estate, substantial owners of capital stock of Swift & Co., Chicago, meat packers, in exchange for an assignment of a license to manufacture a centering device which was owned by the Mechanical Manufacturing Co., a corporation at that time engaged in the manufacture and sale of draft gears and which was controlled by the Swift Estate. Therefore, subsequent to December 1, 1929, officials and employees of Armour & Co. owned 3,749 shares of common stock, and officials and employees of Swift & Co. owned 1,666 shares of common stock of a total outstanding issue of 8,666 shares of common stock—the remaining shares being principally owned by A. J. Pizini, president of the Waugh Equipment Co.

PAR. 5. Respondents Meeker and Ellis, cooperating with the officials and employees of the respondent corporation, Waugh Equipment Co., beginning in the year 1924 and continuing through the year 1929 used the large volume of traffic of Armour & Co. and its subsidiaries, under the direction and control of respondent Ellis, to induce and compel various railway companies of the United States to purchase draft gears manufactured and sold by the respondent corporation in preference to draft gears of equal or higher quality manufactured and sold by competitors, by giving the traffic officials of said railway companies, directly or indirectly, promises and assurances of freight traffic to be shipped over the lines of said railway companies by Armour & Co., and its subsidiary corporations, if said railways would purchase draft gears manufactured and sold by the Waugh Equipment Co.; also by giving the traffic officials of said railway companies, directly or indirectly, promises and assurances of, and in some instances by actually furnishing, an increased volume of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and its subsidiary corporations, if said railways would purchase draft gears manufactured by the Waugh Equipment Co.; and also by threats of withdrawal, and the actual withdrawal, of freight traffic from the lines of certain railway companies by said Armour & Co., and its subsidiary corporations, if and when said railway companies would not purchase the draft gears manufactured by the Waugh Equipment Co.

PAR. 6. Respondent corporation, Waugh Equipment Co., cooperating with respondents Meeker and Ellis, pursuant to the agreement set forth in paragraph 4 hereof, and as a result of their activities as set forth in paragraph 5 hereof, succeeded in making substantial sales of draft gears manufactured by it to the Chicago Northwestern

Railroad for new freight equipment during the years 1924, 1926, 1927, 1928, 1929, and 1930; to the Missouri Pacific Railway Co., during the years 1926, 1927, 1928, 1929, and 1930; to the Wabash Railroad during the year 1928; to the American Refrigerator Transit Co., jointly controlled by the Wabash and the Missouri Pacific Railroad, during the years 1924, 1926, 1927, 1928, and 1930; to the St. Louis-San Francisco Railroad during the years 1926, 1928, and 1929; to the Missouri, Kansas & Texas Railroad during the year 1930; to the Rock Island Lines during the years 1929 and 1930; to the Chicago, Burlington & Quincy Railroad during the years 1928 and 1929; to the Chicago, Milwaukee, St. Paul & Pacific Railroad during the years 1928, 1929, and 1930; to the Boston & Maine Railroad during the years 1928 and 1929; to the New York, New Haven & Hartford Railroad during the years 1927 and 1930; to the Lehigh Valley Railroad during the years 1927 and 1929; to the New York Central Railroad during the years 1929 and 1930; to the Erie Railroad during the years 1928, 1929, and 1930; to the Delaware, Lackawanna & Western during 1926 and 1927; to the Chesapeake & Ohio during 1930; and to the Pere Marquette Railroad during 1930.

PAR. 7. From August, 1924, until April, 1926, the respondent corporation, Waugh Equipment Co., continued to manufacture and sell the spring plate type of gear which had been formerly manufactured by its predecessor, the Waugh Draft Gear Co., except that some improvement was made in the gear and it was encased in a housing. On or about April 1, 1926, respondent corporation began to manufacture and sell a friction type draft gear, known as the Waugh-Gould gear—it having acquired certain rights to manufacture same from the Gould Coupler Co., a concern manufacturing and selling a relatively small number of draft gears at that time, principally to the Philadelphia & Reading Railroad. From 1926 until 1930 the great bulk of sales of draft gears for freight equipment of respondent corporation was of the Waugh-Gould friction type draft gear, which was improved from time to time, until in the latter part of 1929, it was rated as one of the three best draft gears on the market in laboratory tests which were made by the American Railway Association. It had not been in use on railways for a sufficient length of time to determine its merits in actual service, and it had been found necessary to make changes and improvements to overcome defects which had been discovered as the gear had been placed in service on various railroads.

Respondent corporation continued to sell substantial quantities of the old spring-plate type gear to various railroads for use on passenger cars—it being recognized as suitable for such purpose, where smoothness of action rather than durability is required.

PAR. 8. The principal competitors of the respondent corporation, since the year 1924, are the following:

W. H. Miner, Inc., Wilmette, Ill., which has been manufacturing and selling draft gears since 1897 under the trade name Miner. It has been generally recognized as the best draft gear on the market for a number of years and has enjoyed the largest sales. In 1924 and 1925 it sold over 50 per cent of the total number of draft gears sold for new freight equipment and controlled a larger percentage of the total draft gear sales.

National Malleable & Steel Castings Co., which has been, for a number of years, selling draft gears under the trade name of National.

Westinghouse Air Brake Co., which prior to November, 1929, sold and distributed the Westinghouse gear.

The Union Draft Gear Co., which prior to November, 1929, sold the Cardwell draft gear. During that year the consolidation of these two concerns took place, and the Union Draft Gear Co. now sells what is known as the Cardwell-Westinghouse gear.

Bradford Corporation, which was organized in 1924, and which was a consolidation of three railway equipment manufacturers, which since 1917 had been engaged in the manufacture and sale of the Bradford gear.

Standard Coupler Co., which corporation since 1922 has been engaged in selling the Sessions draft gear, which is a gear that has been on the market since 1901.

Keyoke Railway Equipment Co., which corporation sold a draft gear known as the Murray since about 1914.

The Mechanical Manufacturing Co., which concern was owned by interests connected with Swift & Co., meat packers, Chicago, Ill., and which sold in 1929 a draft gear known as the Durable.

Despite the fact that respondent corporation, during the period of time from August, 1924, until the year 1929, was manufacturing and selling a practically unknown gear, in competition with the foregoing competitors, well established in the industry, it succeeded in forging ahead of all of them from a place of obscurity, when it sold less than 1 per cent of the total draft gears for new freight equipment in 1924, until in 1929 it sold approximately 25 per cent, and in 1930 approximately 35 per cent of the draft gears sold for new freight equipment to the railroads of the United States.

During the year 1924 the various railroads of the United States placed orders for approximately 144,000 freight cars, which was the largest building program for any year since 1916 except 1922. Each new freight car must be equipped with two draft gears—one at either end. During that year the following principal manufacturers and

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distributors of draft gears sold gears for freight car equipment as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	79, 325
The Bradford Co.....	21, 995
The Westinghouse Co.....	21, 250
National Malleable Steel Castings Co.....	5, 233
Standard Coupler Co.....	4, 771½
Keyoke Equipment Co.....	10, 723
Waugh Equipment Co. ¹	2, 156
Gould Coupler Co.....	1, 602½

In 1925 approximately 93,000 freight cars were ordered by railroads of the United States, which was considerably below normal. During that year the sales of the principal draft gear companies for freight car equipment were as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	33, 015
The Bradford Co.....	20, 613½
National Malleable Steel Castings Co.....	22, 668½
Westinghouse Co.....	6, 971
Standard Coupler Co.....	2, 404
Keyoke Equipment Co.....	5, 292
Waugh Equipment Co.....	2, 817
Gould Coupler Co.....	1, 078

In 1926, approximately 67,000 orders for freight cars were placed by the railroads of the United States, which was the lowest number since 1921. Sales of draft gears by the aforementioned draft gear companies during 1926 for freight car equipment were as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	28, 226
The Bradford Co.....	17, 880½
National Malleable Steel Castings Co.....	11, 110
Westinghouse Co.....	16, 000
Standard Coupler Co.....	6, 137½
Keyoke Equipment Co.....	6, 317
Waugh Equipment Co.....	4, 000
Gould Coupler Co.....	237

These figures for Waugh included approximately 600 sets of old Waugh gears, 1,750 sets of the Gould gear 175, and 1,500 sets of the Waugh-Gould gears developed during that year by the respondent company.

¹ The sales of this company include 2,782 gears or 1,391 sets sold by the old company, of which number 835 sets were sold to Armour & Co. under contract made in March, 1924.

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In 1927 approximately 72,000 orders for freight cars were placed by the railroads of the United States, which it will be noted, was a slight increase over 1926. The sales of the aforementioned draft-gear companies during 1927 for freight-car equipment were as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	15, 811
Bradford Co.....	8, 833
National Malleable Steel Castings Co. ^a	14, 903
Westinghouse Co.....	11, 390
Standard Coupler Co.....	3, 867½
Keyoke Equipment Co.....	8, 507
Waugh Equipment Co.....	7, 992½

In 1928 approximately 51,200 orders for freight cars were placed by the railways of the United States, which was the lowest number ordered in any year except two in 28 years. The sales of the aforementioned draft-gear companies for freight-car equipment during 1928 were as follows:

New equipment only	Sets (2 gears)
W. H. Miner Co.....	16, 459
The Bradford Co.....	4, 784½
National Malleable Steel Castings Co. ^a	16, 630
Westinghouse Co.....	10, 500
Standard Coupler Co.....	7, 014½
Keyoke Equipment Co.....	2, 140
Waugh Equipment Co.....	10, 415

In 1929, 111,218 freight cars were ordered by the railways of the United States, which exceeded orders for all previous years since 1913, except four years. The sales of the aforementioned draft-gear companies during 1929 for freight cars were as follows:

New equipment only	Sets (2 gears)
W. H. Miner Co.....	24, 382
The Bradford Co.....	7, 425
National Malleable Steel Castings Co. ^a	20, 164
Westinghouse Co. ^a	2, 800
Standard Coupler Co.....	4, 241
Keyoke Equipment Co.....	6, 293½
Waugh Equipment Co.....	28, 293

In 1930, 46,360 orders for freight cars were placed by the railroads of the United States, the total number for the year being less than half the orders placed in 1929 and one of the three lowest years in 30 years. The small number of cars ordered was due principally to the

^a Sales to railroad companies as distinguished from private-car lines and industrial plants.

^a This company was merged with the Cardwell Draft Gear Co. during that year, which accounts for the small number of gears sold.

decline in traffic commencing in October, 1929. The principal purchaser of draft gears was the Van Sweringen group, which purchased 13,754 cars. The sales of the aforementioned draft-gear companies during the first four months of 1930 for freight-car equipment were as follows:

New equipment only	Sets (2 gears)
W. H. Miner Co.....	8, 877
The Bradford Co.....	3, 310
National Malleable Steel Castings Co.*.....	12, 813
Standard Coupler Co.....	853½
Keyoke Equipment Co.....	279½
Waugh Equipment Co.....	17, 054

The ordinary procedure followed by the draft gear companies named in this paragraph, competitors of the respondent corporation, in the sale and distribution of draft gears to the railroad companies before the advent of the respondent corporation, and at the present time is to first attempt to sell the product to the mechanical department of the railroad and then to solicit the operating and purchasing officials. No contact is made with the traffic department. After the mechanical officials have placed the gears in the specifications for new equipment, the purchasing department of the railway companies usually called upon the draft gear manufacturers for bids. There is substantial evidence in the record to show, however, that due to the activities of respondents Ellis and Meeker described in paragraph 5 hereof, in many instances the specifications of the mechanical departments of the railroads were broadened to include gears manufactured by the respondent corporations, contrary to the recommendation of the mechanical officials, and purchases were made of said gears regardless of the bids of competitors.

The factors ordinarily taken into consideration by officials of the railroad who purchase draft gears before the advent of the respondent corporation were—first, quality of the product, second, price of the product, and third, salesmanship. The draft gear companies named in this paragraph, competitors of the respondent corporation, do not have any appreciable traffic to offer as an inducement to railroad companies who purchase their gears, and are therefore unable to meet the competition of the respondent corporation as described in paragraphs 5 and 6 hereof, and their gears as a result have been displaced on a number of railroad lines by the product of the respondent corporation.

* Sales to railroad companies as distinguished from private-car lines and industrial plants.

The president of one competitor testified that the decline in his company's sales of gears to the railroad companies was due to the extreme competition of the respondent corporation and one other concern by the use of traffic which he didn't have. He named the respondent corporation as the principal offender in this respect, particularly on the Missouri Pacific, Seaboard Air Line, and the Rock Island roads. He also named the Missouri, Kansas & Texas, the Chicago, Milwaukee, St. Paul & Pacific, the Boston & Maine, the New York, New Haven & Hartford, the Lehigh Valley, the Delaware & Lackawanna, and the Chesapeake & Ohio, as other railroads where this type of competition on the part of the respondent corporation had been encountered.

The president of another competing draft gear manufacturer testified that the loss of business by his company in 1929 was caused, to some extent, by what he termed "traffic conditions"; that he had found it necessary to attempt to overcome traffic consideration on the part of some competitors, naming the respondent corporation and one other concern (The Union Draft Gear Co.).

The vice president of one of the largest manufacturers of draft gears and one of the oldest in the industry, testified that his firm had lost business and sales had been reduced in 1929 as compared with previous years due to "various competitive conditions which had not been effective in earlier years—notably traffic". He explained this statement as follows: "I mean the urging of railroad officials to consider specialties in consideration of traffic which might be given to the railroads who are contemplating the purchase of this new equipment". He named the respondent corporation and the Union Draft Gear Co. as competitors who were using traffic as outlined by him to solicit business from the railroads, particularly on the Chicago & Northwestern road.

Officials of other competitors, while admitting that they had lost business to the respondent corporation, and had keenly felt its competition, would not attribute the loss of their business to the use of traffic on the part of respondent corporation.

PAR. 9. The aforesaid acts and things done by respondent Ellis, Meeker, and the respondent corporation, Waugh Equipment Co., are all to the injury of the public and competitors of respondent corporation, and unduly tends to suppress competition between respondent corporation and competing manufacturers of draft gears, and to create a monopoly in the respondent corporation in the sale and distribution of draft gears and other railway equipment, in that the respondent corporation, cooperating with respondents, Meeker and Ellis, have created and taken advantage of a competitive weapon, oppressive and coercive in nature, which prevents the customers to

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whom the respondent corporation and its competitors are trying to sell their products, from exercising their free will and judgment in determining which device is the most efficient and will best serve their needs at the lowest net cost over a period of time, and has thus injected an element in the competitive field in which respondent corporation is engaged, which is unfair and abnormal, and tends to reduce the efficiency and economy in the production and sales methods of competing manufacturers and gives to the concern that controls the largest volume of freight traffic an unfair advantage that will more than offset the higher efficiency in the production and sales methods of competing concerns which control no such traffic, and force all competitors either to abandon the draft gear field or to compete by gifts of stock or other valuable consideration to employees of corporations controlling and directing heavy volumes of traffic unrelated to the draft gear industry, and thus hinder and restrain the freedom of competition in the natural, customary, and prevailing channels of trade in the draft gear industry.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the Commission having made its findings as to the facts and the conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the following respondents, Waugh Equipment Co., Arthur Meeker, and Frederick W. Ellis, their agents, representatives, and employees, shall cease and desist the use of the volume of the traffic of Armour & Co. and/or its subsidiary corporations, in the solicitation of draft gear or other railway equipment business in interstate commerce from railway companies by the following methods:

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(a) By promises and assurances of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and/or its subsidiary corporations, or any other shipper of a substantial volume of freight traffic;

(b) By promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and/or its subsidiary companies, or any other shipper of substantial volume of freight traffic; and/or

(c) By threats of withdrawal of traffic from the lines of said railway companies by Armour & Co. and/or its subsidiary corporations, or any other shipper of substantial volume of freight traffic, if said railway companies would not purchase draft gears or other railway equipment manufactured and/or sold by respondent corporation.

It is further ordered, That said respondents, Arthur Meeker and Frederick W. Ellis, shall cease and desist cooperating with and assisting the respondent corporation, its officers, agents, and employees in the sale and distribution of its draft gear and other railway equipment in interstate commerce to railway companies by utilizing their official positions in Armour & Co. to induce or compel officials of railway companies to give undue preference to draft gear or other railway equipment manufactured and/or sold by respondent corporation by means of promises of freight traffic from said Armour & Co. and/or its subsidiary corporations and threats of withdrawal of said traffic if said railway companies would not purchase draft gear or other railway equipment manufactured and/or sold by said Waugh Equipment Co.

It is further ordered, That the respondents, Waugh Equipment Co., Arthur Meeker, and Frederick W. Ellis, shall individually and separately within 60 days after the service upon them of copies 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 hereinbefore set forth.

ORDER OF DISMISSAL AS TO J. B. SCOTT ¹

This case coming on for further consideration, upon motion of counsel for the Commission approved by the chief counsel to dismiss the proceedings as to respondent J. B. Scott for lack of proof, and the Commission having considered the same, and being fully advised in the premises,

It is ordered, That the complaint herein be and the same hereby is dismissed with respect to respondent J. B. Scott.

¹ Made as of December 16, 1931.

Syllabus

IN THE MATTER OF

AVIATION INSTITUTE OF U. S. A., INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1834. Complaint, May 20, 1930—Decision, September 21, 1931

Where a corporation (1) engaged in selling a correspondence course in aviation to students in practically all the States, and in many foreign countries from its place of business in Washington, D. C., and (2) headed by a person, who held no commission as lieutenant or other officer in the Navy or in the Air Corps of the United States Army or any other branch thereof, and held no office in any department or branch of the Government but had come to be identified in the public press, in official correspondence, and otherwise, by his name, and title as a former lieutenant in the Navy, as a result of his part in a famous Navy trans-Atlantic flight, and of other subsequent exploits,

- (a) Included the letters U. S. A. prominently in its trade name Aviation Institute of U. S. A. and in its corporate name Aviation Institute of U. S. A., Incorporated or Aviation Institute of U. S. A., Inc., and made extensive use of said trade name in its business and school stationery and papers, advertisements, catalogues, enrollment blanks, printed lessons, etc., and, less frequently, of its corporate name or both, and in connection with such use of said trade and corporate names usually set forth on the same line the words "Washington, D. C.";
- (b) Made general use of the title "lieutenant" or the abbreviations thereof in referring to its aforesaid head or president in catalogues, enrollment blanks, advertisements, and other printed matter bearing its trade or corporate names and Washington address, as above set forth, and referred therein to said lieutenant and "staff";
- (c) Displayed and used in catalogues, advertisements, enrollment blanks, textbooks, registration and graduation certificates, and other printed matter an insignia or trade-mark consisting of wings separated by a shield and resembling in such respects the Naval Aviation insignia and those employed by the air corps of the United States Army, though distinguishable therefrom by careful side by side comparison;
- (d) Made use of pictorial representations of what might be said to be the dome of the National Capitol and of the Washington Monument on letter-heads, and in catalogues reproduced a letter of indorsement addressed to its said president by the Assistant Secretary of War on the official letter-head of the War Department, and set forth in such catalogues (1) statements emphasizing its Washington location and the Government activities centering there and relating to the conduct and development of aviation in its various phases, and (2) the indorsement of the course by Army and Navy officials, etc., together with said letter, and stated that such factors "help make Aviation Institute training the complete service that it is";

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With the capacity and tendency to mislead and deceive the public and to cause it to enroll for said course and contract therefor under the erroneous belief that it or its course was officially connected or closely affiliated with the Army or Navy or some department of Government or was under supervision or direction of some officer or employee thereof and conducted in accordance with the requirements of the Army, Navy, or some Government branch, and that through such supposed official connection or affiliation it was in a better position to give information and instruction than its competitors, and with the capacity and tendency thereby to prejudice and injure the public, divert trade unfairly from and otherwise prejudice and injure competitors' business, and operate as a restraint upon and a detriment to freedom of fair and legitimate competition in the conduct of the business concerned in interstate commerce:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James W. Nichol, for the Commission.

Mr. Marvin Farrington, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation, engaged in the sale of a course of instruction in aviation by correspondence, and with principal place of business in Washington, D. C., with using misleading corporate name and advertising falsely or misleadingly as to Government indorsement or connection, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, and having no official connection with the Army, Navy, nor any department or branch of the Government, nor conducting its course in accordance with the requirements or under the supervision or direction thereof, or any officer or employee thereof, though headed by a former lieutenant in the flying service of the Navy,² employs trade and corporate names including the letters "U. S. A."³ features the same in catalogues, advertisement, and enrollment blanks etc., displays a depiction of wings simulating the well-known insignia adopted and

² But who at and since respondent's organization held no commission as lieutenant or other officer in the Navy or in the Army or in any office in any department or branch of the Federal Government.

³ As alleged in the complaint: "The letters 'U. S. A.' constitute an abbreviation of the terms 'United States Army' and 'United States of America'; and they are and at all times herein mentioned have been understood and recognized by the purchasing public of the United States as signifying and indicating 'United States Army' and 'United States of America'."

used by the Army, makes extensive use of the military title formerly held by its head, sets forth depictions of the dome of the Capitol and of the Washington Monument on its letterheads, dwells upon and emphasizes official aviation activities of one sort and another, and official investigations, etc., relating to aviation in connection with its own Washington location,⁴ claims indorsements by Army and Navy officials, and reproduces a facsimile of a letter of indorsement from the Assistant Secretary of War, on the official letterhead of the War Department.

Respondent's use, as alleged, "of said letters U. S. A. in its corporate and trade names, with or without the simulation of the insigna adopted and in use by the United States Army in connection with its flying service, the extensive use of the military title "lieutenant", and the use by it in its advertising matter of pictorial representations and expressions, as set forth * * * in advertising its course of instruction in the art of aviation and in soliciting students therefor—all as hereinbefore set forth—is calculated to and has had and has the capacity and tendency to mislead and deceive the public, and/or does mislead and deceive the public, and cause, a substantial portion thereof to enroll as students with said respondent, Aviation Institute of U. S. A., Inc., and to purchase said printed or written lessons, instructions, charts, drawings, textbooks, and various supplies and appliances to be used by said students in and about the study and acquisition of the art of aviation, under the erroneous belief that said respondent, Aviation Institute of U. S. A., Inc., is officially connected or closely affiliated, either directly or indirectly, with the United States Army or Navy, or with some other department or branch of the Federal Government;⁵ and/or that its course of instruction is conducted in accordance with the requirements or under the supervision or direction of the United States Army or Navy, or some other department or branch of the Federal Government, or some officer or employee thereof; and/or, that because of such supposed official connection or affiliation, as set forth above said respondent is in a better position to give information and instructions than competing institutions teaching the art of aviation by correspondence."

⁴Matter, in this connection, taken, as alleged, from respondent's advertising may be found set forth, *infra.*, in the findings, at page 260 (paragraph beginning "The Aeronautics Bureau", etc.), page 261 (paragraph beginning "The general offices", etc.), and page 261 (paragraph beginning "There are definite reasons", etc.).

⁵In this general connection complaint alleges: "The United States Army and Navy both maintain aviation schools, where courses in military and naval aviation, respectively, are given students wishing to qualify for commissions in these branches; the Aeronautics Branch of the Department of Commerce is engaged in the promotion and regulation of civil aeronautics; and the Air Mail Service of the Post Office Department has general supervision of the transportation of mail by air."

The aforesaid alleged false, misleading and deceptive acts and practices of respondents, as charged, "under the circumstances and conditions hereinbefore set forth, have and had the capacity, tendency and effect of unfairly diverting trade from and otherwise injuring the business of respondent's competitors, are to the prejudice and injury of the public, and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Aviation Institute of U. S. A., Inc., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. The respondent thereafter having filed answer to said complaint, and having made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by and between the respondent and the Federal Trade Commission that the said Commission may take said agreed statement as the facts in this proceeding and in lieu of testimony in support of the charges stated in said complaint or in opposition thereto, and that said Commission may proceed upon said agreed statement to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding—the right of both the Commission and respondent to file briefs and present oral argument being expressly reserved; thereafter this matter came on regularly for final hearing on the briefs of counsel and oral argument, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Aviation Institute of U. S. A., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The original certificate of incorporation, which was filed April 21, 1926, was under the name of Aviators Preparatory Institute, Inc., and under this name an office was established at 501 Fifth Avenue, New York City, and later at 71 West Forty-fifth Street, New York City, the corporation having

a capitalization of 240 shares of no par value stock. The name of the corporation was changed to Aviation Institute of U. S. A., Inc., by a certificate filed July 5, 1927, and during the month of July, 1927, the office was removed to 1115 Connecticut Avenue, Washington, D. C., where it has since been located. The officers of the corporation are: Walter Hinton, president, James E. Smith, vice president and treasurer, and M. V. Engelbach, secretary and general manager. (Agreed statement of facts, par. 1 (a).)

(b) Since its organization, respondent has been and is now engaged in the business of selling a course of instruction and instruction service in the art of aviation, by correspondence through the United States mails, to persons hereinafter referred to as students, residing in the District of Columbia and at points in various States of the United States. Respondent's present enrollment records include students in practically every State of the United States and many foreign countries. (Agreed statement of facts, par. 1 (b).)

(c) In the course of its said business, and in order to secure students therefor, respondent has caused and causes advertisements offering its course of instruction and instruction service to be inserted in newspapers, magazines, periodicals and other publications of extensive circulation throughout the United States and various sections thereof. After securing the names of prospective students by means of advertisements inserted, published and distributed as thus set forth, respondent sends, to said prospective students, catalogues, letters, leaflets, and other like literature offering and describing its course of instruction and instruction service and setting forth the terms upon which it is sold, etc. (Agreed statement of facts, par. 1 (c).)

(d) As a result of the advertisements, catalogues, letters, leaflets, and other like literature inserted, published and distributed as aforesaid, numerous students execute the contract contained in respondent's "enrollment blank" (Exhibits 42 and 43¹ to the agreed statement of facts) and thereby contract with respondent for its course of instruction and instruction service, and, pursuant to the terms of said contract, respondent sends by mail from its place of business in the City of Washington, in the District of Columbia, to said students at their respective places of residence in the District of Columbia and in the various States of the United States, and certain foreign countries, for use by said students in and about the pursuit and study of its course of instruction, printed lesson texts or instruction books, which contain, in addition to the text proper, and as supplementary and explanatory thereof, numerous drawings, photographs, cuts, sketches, and diagrams. At the present time, respondent publishes

¹ Exhibits not published.

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and distributes to its students as aforesaid 36 separate and distinct printed lesson texts or instruction books, each of which covers a different subject in its course of instruction. One of such instruction books appears as Exhibit 64 to the agreed statement of facts. Ordinarily, said printed lesson texts or instruction books are the only lesson texts sent by mail by respondent to its students. In special cases where students require or desire special and/or additional instruction, such special and/or additional instruction or questions, usually in typewritten form, are sent by mail to such students by respondent without additional or extra charge as a regular part of the respondent's course of instruction. In connection with its course of instruction, respondent, in addition to printed lesson texts or instruction books and/or special and/or additional instructions or questions in typewritten form, sends by mail to its students for the convenience of the respondent sets of notebook covers, examination paper upon which to return answers to the printed or typewritten lessons, and return envelopes for inclosing said answers. (Agreed statement of facts, par. 1 (*d*).)

In consideration for respondent's said course of instruction and instruction service, as offered and set forth in its said enrollment blank and all other literature and letters, as hereinbefore set forth—respondent's said students pay and remit to respondent certain agreed sums of money, upon the terms as set forth in respondent's said enrollment blank. (Agreed statement of facts, par. 1 (*d*).)

Upon properly completing respondent's full course of instruction, students are entitled to and supplied by respondent with a graduation certificate suitable for framing and a student's certificate bearing the student's photograph in a pocket case. (Exhibits 65 and 66 to the agreed statement of facts.) (Agreed statement of facts, par. 1 (*d*).)

(*e*) In the course and conduct of its business, as hereinbefore set forth, respondent is and has been in competition with individuals, partnerships, and other corporations also engaged in the business of selling courses of instruction in the art of aviation by correspondence to students located in the District of Columbia and in various States of the United States. (Agreed statement of facts, par. 1 (*e*).)

PAR. 2. In the course and conduct of its business, as set forth in paragraph 1 hereof, respondent has described and describes itself, and has employed and employs as a trade name or designation the words "Aviation Institute of U. S. A." as follows:

(1) On its printed lesson texts or instruction books. There are 36 of such books, and the designation referred to is used in 5 and sometimes 6 places in each. A sample of these textbooks appears in the record as Exhibit 64 to the agreed statement of facts.

(2) On many of its advertisements: (a) In advertisements in magazines and periodicals covering the years 1927 to 1930 (Exhibits 1 to 22, both inclusive, to the agreed statement of facts); (b) In circulars used from 1927 to 1930, of which, according to figures furnished by respondent and appearing in the agreed statement of facts, approximately 1,002,968 copies have been issued (Exhibits 26, 28, 31, 33, 35, 36, 38, 54 and 55, to the agreed statement of facts);

(3) On one of its catalogues, entitled "Wings of Opportunity," now in use, of which approximately 88,000 copies have been issued (Exhibit 60 to the agreed statement of facts);

(4) On one of its letterheads, of which approximately 112,874 have been distributed (Exhibit 23 to the agreed statement of facts);

(5) On its reply and other envelopes: (a) On its business reply envelope, still in use, and of which approximately 800,000 have been issued (Exhibit 24 to the agreed statement of facts);

(b) On an envelope used in sending the student his first working papers, in present use, and of which approximately 9,950 have been issued (Exhibit 59 to the agreed statement of facts);

(6) On money-order blanks, still in use, and of which approximately 645,000 have been issued (Exhibit 25 to the agreed statement of facts);

(7) Registration certificate, in present use, in 3 places, and of which approximately 5,000 have been issued (Exhibit 62 to the agreed statement of facts);

(8) Graduation certificate, in present use, in 3 places (Exhibit 65 to the agreed statement of facts);

(9) Blank used to obtain employment qualification information from nonstudents, and of which approximately 2,000 have been issued (Exhibit 56 to the agreed statement of facts);

(10) On page 1 of an old catalogue "Rich Rewards in Aviation," of which approximately 21,700 copies have been issued (Exhibit 58 to the agreed statement of facts);

It has described and describes itself by its full corporate name, viz: Aviation Institute of U. S. A. Incorporated or Aviation Institute of U. S. A. Inc. as follows:

(1) On all but one of its letterheads, in use from 1928 to the present time, of which approximately 1,139,500 have been issued (Exhibits 26a, 27, 29, 32, 34, 37, 40, 44 to 52, inclusive, to the agreed statement of facts);

(2) Some of its advertisements: (a) Flying-school circular, of which approximately 114,000 have been issued (Exhibit 39 to the agreed statement of facts); (b) Circular, of which approximately

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44,000 have been issued (Exhibit 53 to the agreed statement of facts);

(3) Some of its catalogues: (a) Page 32 of an old catalogue "Rich Rewards in Aviation," of which approximately 21,700 copies have been issued (Exhibit 58 to the agreed statement of facts);

(4) On a money-back agreement, now in use, of which approximately 75,000 copies have been issued (Exhibit 30 to the agreed statement of facts);

(5) On a postal card, now in use, of which approximately 13,000 copies have been issued (Exhibit 41 to the agreed statement of facts);

(6) On a students' qualification record, of which approximately 8,000 copies have been issued (Exhibit 57 to the agreed statement of facts);

and in a few instances has described and describes itself under both the trade name or designation Aviation Institute of U. S. A. and its full corporate name, as hereinbefore set forth:

(1) On its enrollment blanks, old and new forms, of which approximately 65,600 copies have been issued (Exhibits 42 and 43 to the agreed statement of facts);

(2) On a sticker used for addressing large envelopes, of which approximately 52,000 have been issued (Exhibit 61 to the agreed statement of facts);

(3) Flying-school credit check, of which approximately 1,000 have been issued (Exhibit 63 to the agreed statement of facts);

(4) On a student's certificate, suitable for a pocket case (Exhibit 66 to the agreed statement of facts);

all of said printed or written matter being circulated through the United States mails as aforesaid in the District of Columbia and in commerce between the District of Columbia and various States of the United States. (Agreed statement of facts, par. 2.)

On, to wit, May 17, 1930, respondent issued written orders to its employees, advertising agency, printers and publishers with which it does business, directing that in all cases where its name is used, in printed literature or correspondence, it be used in its full and complete form, viz: Aviation Institute of U. S. A., Inc. or Aviation Institute of U. S. A., Incorporated. (Agreed statement of facts, par. 2.)

The Commission finds, after a careful consideration of all of the above evidence, that respondent's full corporate name is Aviation Institute of U. S. A. Inc.; that respondent has made extensive use of the trade name or designation Aviation Institute of U. S. A. in describing itself; that to a considerably lesser extent it has used its full corporate name Aviation Institute of U. S. A. Incorporated or Avia-

tion Institute of U. S. A. Inc.; and that in a comparatively few cases it has used both the trade name Aviation Institute of U. S. A. and its full corporate name as aforesaid; that the letters U. S. A., as used in said trade and corporate names as aforesaid, occupy a prominent position in said names, appearing always in capitals, and usually on the same line as the remainder of the names; and that the address of the respondent, viz: Washington, D. C., with few exceptions, is used by respondent in connection with its trade and corporate names.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in addition to the use of the trade name or designation Aviation Institute of U. S. A. has used and displayed and uses and displays in catalogues, advertisements, enrollment blanks, text books, registration and graduation certificates, and other printed matter circulated in the District of Columbia and in commerce between the District of Columbia and various States of the United States—an insignia or trade-mark, consisting of an angular shield, the outline of which is composed of straight lines, joining each other at obtuse and acute angles, said shield having across its surface or face a wide bar set at an angle with the horizontal, higher on the right side than on the left, said shield being located between two slim conventionalized bird's wings, the top boundary of which is a straight horizontal line; and said shield bearing the respondent's trade name Aviation Institute of U. S. A., without the suffix Inc. or the word Incorporated.

As an illustration of respondent's use of its said insignia or trade-mark, attention is called to the printed reproduction appearing on the front cover of Exhibit 64 to the agreed statement of facts. (Agreed statement of facts, par. 3.)

The Air Corps of the United States Army uses an insignia, consisting of two spread, curved, birdlike wings, separated as follows: (a) in the case of an airplane pilot, by a depiction of a shield, which in this case is the type of shield generally used on all of the United States Government insignia, having curved outlines and on its surface the usual vertical stripes to simulate the United States flag; (b) in the case of an airship pilot, by a depiction of an airship; (c) in the case of a balloon observer, by a depiction of a balloon; and (d) in the case of an airplane observer, by a depiction of a ring or "O." Reproductions of said Army insignia appear as Exhibit 68 to the agreed statement of facts. (Agreed statement of facts, par. 3.)

The naval aviation insignia consists of two spread wings, separated by a depiction of a shield and fouled anchor. A reproduction

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thereof appears as Exhibit 69 to the agreed statement of facts. (Agreed statement of facts, par. 3.)

A careful side-by-side comparison of respondent's said insignia or trade-mark with the various insignia employed and used by the Air Corps of the United States Army, and with that employed by the flying service of the United States Navy, as hereinbefore set forth, would enable one to distinguish between respondent's said insignia and those employed and used by the Air Corps of the United States Army and that employed by the flying service of the United States Navy. (Agreed statement of facts, par. 3.)

Most aircraft manufacturers, aeronautical schools, associations, clubs and organizations have used or are using some insignia of this same general type, which as a rule is a shield of some sort between two spread wings. (Agreed statement of facts, par 3.)

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, respondent refers to its president as Lieutenant, and uses and has made general use of said title Lieutenant in catalogues, enrollment blanks, advertisements, and other printed matter bearing the trade name of the respondent, viz: Aviation Institute of U. S. A., or its corporate name, viz: Aviation Institute of U. S. A. Inc., and circulated, as aforesaid, in the District of Columbia and in commerce between the District of Columbia and various States of the United States. (Agreed statement of facts, par. 4.)

In respondent's Enrollment Blank, which is the form used for contracting with its students and which consists of one sheet of paper $8\frac{1}{2} \times 11$ inches, printed on one side, the title "Lieutenant" in its abbreviated form "Lieut." appears nine times in Exhibit 42 and eight times in Exhibit 43 to the agreed statement of facts. Respondent stipulates that approximately 12,000 copies of Exhibit 42 and 53,600 copies of Exhibit 43 have been issued.

In respondent's catalogue "Rich Rewards in Aviation," in use from October, 1927, to February, 1929 (Exhibit 58 to the agreed statement of facts), the title "Lieutenant" appears 23 times in its abbreviated forms "Lieut." and "Lt." Respondent stipulates that approximately 21,700 copies of this catalogue have been issued.

A coupon attached to respondent's advertisement in the Popular Science magazine for April, 1928 (Exhibit 2 to the agreed statement of facts), and intended for use by prospective students in sending for respondent's catalogue "Rich Rewards in Aviation," and also a coupon attached to respondent's advertisement in the Motion Picture Magazine for April, 1929 (Exhibit 8 to the agreed statement of

facts), and used by a prospective student in sending for respondent's catalogue "Wings of Opportunity," both bear the following super-
scription:

Lieut. Walter Hinton,
Aviation Institute of U. S. A.
1115 Connecticut Avenue, Washington, D. C.

Exhibit 41 to the agreed statement of facts, which is a postal card used by the respondent as an enclosure with mailing-list letters to facilitate requests for catalogues, is addressed as follows:

Lieut. Walter Hinton, Pres.,
Aviation Institute of U. S. A., Inc.,
1115 Connecticut Ave., Washington, D. C.

and on the reverse side begins with the salutation:

Lieut. Hinton

In Exhibit 1 to the agreed statement of facts, which is an advertisement by respondent in *The Saturday Evening Post* for October 15, 1927, appears the following:

Send for our free book. It tells how you can learn the principles of the Aviation business at home, in your spare time, guided by *Lieut. Hinton and his staff.* (Italics supplied.)

Walter Hinton, president of the respondent, was lieutenant, junior grade, in the flying service of the United States Navy, from September 21, 1918, to December 31, 1921. Prior to the organization of respondent, said Hinton had severed his connection with the United States Navy, and at and since the organization of respondent has held no commission as lieutenant or other officer of, nor does he have any official connection with, said United States Navy. Said Hinton does not now and never has held a commission as Lieutenant or other officer in the Air Corps of the United States Army, or any other branch of said United States Army; nor does said Hinton hold any office in any department or branch of the Federal Government. During Hinton's said service with the United States Navy, as aforesaid, and particularly by reason of his achievement in piloting the Navy-Curtiss seaplane NC-4 across the Atlantic Ocean in 1919, and other and subsequent exploits, he became identified in the public press with the title "Lieutenant Hinton," being referred to under that designation for the past twelve years in thousands of news items and articles in prominent newspapers, magazines, and periodicals, as well as in correspondence with many Government officials and personal salutation. (Agreed statement of facts, par. 4.)

On May 24, 1929, in connection with official information concerning the scope, activities and personnel of the National Exchange Clubs, for the use of President Hoover, an inquiry was addressed over the signature of his secretary, and upon the stationery of the White House, to the president of the respondent as Lieutenant Walter Hinton. (Agreed statement of facts, par. 4.)

In April, 1929, during the course of a hearing before a joint committee of the Senate and House of Representatives upon H. R. 8300 (the matter under investigation being the establishment of an airport for the city of Washington, D. C.), at which the president of the respondent had been summoned as a witness, he was invariably addressed by members of the Committee as Lieutenant Hinton. (Agreed statement of facts, par. 4.)

The title "Lieutenant" is not peculiar to the United States Army alone; said title is used by the U. S. Navy, the U. S. Coast Guard, the various National Guards, fire departments, police departments, cadet and fraternal organizations, the Salvation Army and many others. Said title has many uses in civil life, one of those being the honorary use, and said title "Lieutenant" does not itself indicate or infer any connection with the military forces of the United States unless said title is used in connection with a particular military designation, such as Captain John Doe, United States Army, or Major John Doe, United States Marine Corps; and for official non-military uses the same system of designation used, as Lieutenant John Doe, Salvation Army, or Lieutenant John Doe, American Red Cross. (Agreed statement of facts, par. 4.)

PAR. 5. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in advertising its course of instruction and in soliciting students therefor, uses and has made use, among others, of the following pictorial representations and expressions:

(a) On a letterhead in use from September 1, 1927, to March 5, 1929, respondent used pictorial representations of what might be said to be the dome of the National Capitol Building and of the Washington Monument, without specific designations or labels, as such. This letterhead has not been generally used by respondent since March 5, 1929. (Exhibit 23 to the agreed statement of facts; agreed statement, par. 5a.)

(b) In a form letter printed on the letterhead referred to in subparagraph (a) of paragraph 5 hereof, Exhibit 23, appeared the following:

The Aeronautics Bureau of the U. S. Department of Commerce is just a few blocks away. The Patent Office files, full of information about the latest

improvements in aviation, is close by. So are the high officials in the Army and Navy Air Services and the Bureau of Standards, where the newest instruments are developed and tested.

The form letter in which the above statement appeared has not been generally used by respondent since March 5, 1929. (Agreed statement of facts, par. 5b.)

(c) In a catalogue, entitled "Rich Rewards in Aviation," published for and used by respondent from October, 1927, to February, 1929, and under the subtitle "Why this course trains you best for a successful career in aviation," appeared the following:

The general offices of the Aviation Institute of U. S. A. are located in Washington, D. C., the very center of aviation development. Here the Department of Commerce is actively promoting commercial aviation, controls airways and issues licenses to pilots. The aeronautical branches of the Army and Navy are striving to improve aircraft and develop new equipment. The Post Office Department supervises all air mail.

The catalogue in which the above statement appeared has not been in use by respondent since February, 1929. (Exhibit 58, p. 7, to the agreed statement of facts; agreed statement par 5c.)

(d) In a catalogue, entitled "Wings of Opportunity," published for and used by respondent from February, 1929, and now in use, under the caption "The Nation's Headquarters is also Aviation's Headquarters," appeared and appears the following:

There are definite reasons why our Washington location helps us give you better training and better service. Washington is the official center of American aviation. Being near by the Government bureaus and departments that handle all aviation work, we are ideally located to get new aviation information immediately. The Department of Commerce, just five blocks from the Institute, is where Uncle Sam has his well-organized Bureau of Aeronautics. Here authentic information and data is worked out on every branch of aviation. Here, too, are issued all Government licenses for planes, pilots, and mechanics. The U. S. Bureau of Standards here is constantly experimenting with all the materials that go into aircraft and airport construction. It tests out new designs of planes and motors in its extensive laboratories and special "wind tunnel." It is helping to build a solid foundation upon which the mass production of planes and equipment can forge ahead. *Factors like these help make Aviation Institute training the complete service that it is.* (Italics supplied.) (Exhibit 60, p. 19, to the agreed statement of facts; agreed statement, par. 5d.)

(e) In catalogue, entitled "Rich Rewards in Aviation," published for and used by respondent from October, 1927, to February, 1929 (Exhibit 58), and under the caption "How This Course Was Developed," appeared the following statement:

It has been indorsed by Army and Navy officials, leading manufacturers and engineers—the very backbone of the industry (p. 6).

Appearing (p. 5) in said catalogue, "Rich Rewards in Aviation," is a reproduction of a letter of indorsement addressed to the president of respondent, dated January 14, 1927, signed by F. Trubee Davison, Assistant Secretary of War, on the official letterhead of the War Department. This said catalogue containing this said reproduction of said letter has not been used by respondent since February, 1929.

Said F. Trubee Davison, in a letter, dated March 30, 1929, addressed to the president of respondent, requested the discontinuance by respondent of the use of said letter of January 14, 1927. (Agreed statement, par. 5e.)

PAR. 6. The abbreviation U. S. A. is recognized by some standard authorities to mean both United States Army and United States of America—Funk & Wagnall's New Standard Dictionary, Webster's New International Dictionary, Official Army Register, The World Almanac and Book of Facts. (Agreed statement of facts, par. 6a to 6e, incl.)

(a) In Funk & Wagnall's New Standard Dictionary (1921), page 7, under the caption "A list of Abbreviations," appears the following:

U. S. A.—United States Army,
United States of America.

In Webster's New International Dictionary (1928), page lxxx, under the caption "Abbreviations Used in This Work," appears the following:

U. S. A.—United States of America,
United States Army.

(b) In the Official Army Register—January 1, 1930—Published by order of the Secretary of War in compliance with law, for the use of the military and governmental organizations of the United States there appears, on page v and vi, a list of abbreviations. On page vi of this list, appears the following:

U. S. A.—United States Army.

(c) In The World Almanac and Book of Facts for 1930, there appears, on pages 796 and 797, a list of "Abbreviations in Common Use." On page 797 is listed the following:

U. S. A.—United States of America;
Union of South Africa;
United States Army.

(d) On page 29 of the Style Manual of the Government Printing Office (revised edition, Oct., 1928), prepared under the direction

of the Public Printer in compliance with law, under the caption "Abbreviations," appears the following:

U. S. A. for United States of America.

U. S. Army for United States Army.

The said Style Manual was approved January 11, 1922, by the Permanent Conference on Printing, composed of representatives of the various executive departments and independent establishments of the Government, as organized with the approval of the President and the Director of the Bureau of the Budget; it was also approved by the Joint Congressional Committee on Printing on February 4, 1922.

(e) There is in the United States Army a long established custom, dating back to Revolutionary times, by which officers sign their names, followed by their titles and U. S. A., the letters U. S. A. meaning, in such instances, United States Army.

PAR. 7. The United States Army and Navy both maintain aviation schools, where courses in military and naval aviation, respectively, are given students wishing to qualify for commissions in these branches; the Aeronautics Branch of the Department of Commerce is engaged in the promotion and regulation of civil aeronautics; and the Air Mail Service of the Post Office Department has general supervision of the transportation of mail by air. (Agreed statement of facts, par. 7.)

PAR. 8. Respondent has not, since the date of its incorporation, and does not now have any official connection with the United States Army or Navy, or with any other department or branch of the Federal Government; nor has its course of instruction since the date of its incorporation, been conducted in accordance with the requirements or under the supervision or direction of the United States Army or Navy, or any other department or branch of the Federal Government, or any officer or employee thereof. (Agreed statement of facts, par. 8.)

PAR. 9. Respondent's use of the letters U. S. A., both in its trade and corporate names, in and of itself, and in connection with the other circumstances of this case, as hereinbefore set forth, namely, respondent's extensive use of a Washington, D. C., address; its general use of the title "Lieutenant" in referring to its president; its general use of an insignia or trade-mark consisting of wings separated by a shield; and its use in advertising matter of pictorial representations and statements, as found by the Commission in paragraph 5 hereof—in advertising its course of instruction in the art of aviation and in soliciting students therefor—is calculated to and has had and has the capacity and tendency to mislead and deceive the

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public, and to cause the public to enroll as students with said respondent and to contract therewith for its said course of instruction, under the erroneous belief: That said respondent is officially connected or closely affiliated with the United States Army or Navy, or with some department or branch of the Government of the United States; or that its course of instruction is conducted in accordance with the requirements or under the supervision or direction of the United States Army or Navy, or some department or branch of the Government of the United States, or some officer or employee thereof; and that, because of such supposed official connection or affiliation, said respondent is in a better position to give information and instruction than competing institutions teaching the art of aviation by correspondence.

PAR. 10. The above alleged misleading and deceptive acts and practices of respondent, under the circumstances and conditions hereinbefore set forth, constitute practices or methods of competition which had and have the capacity and tendency: To prejudice and injure the public; unfairly to divert trade from and otherwise prejudice and injure the business of respondent's competitors; and to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of selling, in interstate commerce, courses of instruction in the art of aviation by correspondence through the United States mails.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the statement of facts agreed upon by respondent and counsel for the Commission, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of section 5 of an act of Congress approved September 26, 1914,

entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Aviation Institute of U. S. A., Inc., its officers, directors, agents, servants, and employees, in the course and conduct of its business of offering for sale and selling a correspondence course of instruction in the art of aviation in commerce between and among the several States of the United States and the District of Columbia—cease and desist from using, as a part of its trade or corporate names, the letters U. S. A., or any letter or letters, word or words, symbol, device, or insignia denoting or indicating that said respondent is officially connected or affiliated with the United States Army or Navy, or with some department or branch of the Government of the United States; or that its course of instruction is conducted in accordance with the requirements or under the supervision or direction of the United States Army or Navy, or some department or branch of the Government of the United States, or some officer or employee thereof,

It is further ordered, That respondent, Aviation Institute of U. S. A., Inc., shall, within 60 days after the service upon it of a copy 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 hereinbefore set forth.

IN THE MATTER OF
ALBERT L. PELTON, TRADING AS RALSTON
UNIVERSITY PRESS

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

Docket 1615. Complaint, May 2, 1929—Decision, Sept. 28, 1931

Where an individual (1) engaged in selling by mail certain books or publications, including "Instantaneous Personal Magnetism" and "Complete Life Building," through study of which, it was advertised, every curable disease could be cured and every incurable disease prevented, and for which most extravagant claims were made, and which were sold under agreement with the author thereof, who had long prior thereto carried on in or from Washington the movement associated with the Ralston Health Clubs and had published and circulated through said clubs under a nom de plume publications in which he outlined his views regarding diet, nutrition, etc., and plans for the development of mentality and personality and acquirement of powers and facilities to insure success in life; and (2) not a graduate of any university or college or school of higher learning, nor (3) possessed of a certificate of efficiency indicating that he had ever taken, as in fact he had never taken, courses of instruction in the different subjects embraced by or relating to the various branches of science or learning discussed in the publications offered and sold by him, nor (4) doing any work, research or otherwise, directly or remotely resembling that done many years ago by or through the aforesaid so-called Ralston Health Clubs,

Adopted and employed the words "Ralston University Press" in the conduct of his said business and represented such supposed institution in advertising circulars as enjoying its "Golden Anniversary" and as continuing the Ralston educational movement and "Research Work," which he elaborated upon and extolled, and set forth as having started in Washington 50 years ago and as having enjoyed the indorsement and patronage of people of the highest prominence in different walks of life, and, under the caption "Change of Location," as now removed, after 40 years, to New England with its rich college and university "traditions and seats of learning," and located near such famous New England colleges as Yale, Trinity, Wesleyan, Harvard, and others, and as now offering "all that was formerly taught for huge fees—and a vast amount of newer discoveries. * * * arranged in our books, and taught much more satisfactorily than by high priced personnel," and thereby furnished prestige, authority, and weight to the inducements offered for the purchase of his said books;

Notwithstanding the fact that the so-called Ralston University or Ralston University of Expression for which the aforesaid author and controlling factor in said Ralston Health Club movement had once caused articles of incorporation to be filed, had ceased to function for more than 25 years, and never maintained any such agency as the Ralston University Press, and such individual had no knowledge or information qualifying or tending to qualify him to prescribe or suggest a course of life or study of either physical or mental application or development, and had no executives or teachers associated with him in his aforesaid book selling business;

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With capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the university referred to still existed in the Connecticut city in which was located said individual's place of business and was there carrying on the work of the same character as that formerly conducted by it in Washington or by the Ralston Club or Ralston Company or by said author by and through such agencies, and that the supposed Ralston University Press was associated with an institution of higher learning known as Ralston University or some other such university or institution, and with effect of prejudicing and injuring through diversion of business, competitors selling books relating to diet, nutrition, health or personal magnetism, without using the word "University" as a part of their trade names, or asserting or implying connection with or relation to any university or institution of higher learning:

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

Mr. James M. Brinson for the Commission.

Mr. George R. Jackson, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charge respondent individual, engaged in the sale at Meriden, Conn., of books purporting to relate to the development and maintenance of physical, mental, and spiritual strength, and development of character, and achievement of success, with misrepresenting business status or advantages, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in the sale of publications of the character above described under such names, among others, as "Complete Life Building," "Instantaneous Personal Magnetism," and "Thought Transference," and himself never associated with any institution of learning known as Ralston University nor possessed of any diploma or certificate of proficiency indicating that he had taken, as in fact he had never taken, courses in biology, chemistry, physical culture, business, medicine, law, etc., to qualify him to suggest any such courses of life, study, or practice, nor selling publications inspired, published, sponsored, or used by any institutions of learning, and without ever undertaking any investigation as to the truth of the representations of facts made by him, contrary to the generally accepted conclusion of competent persons engaged in research in the branches of knowledge concerned, does business under the trade name Ralston University Press and in advertising his aforesaid publications (which reveal nothing theretofore unknown

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to the public so as to enable anyone to accomplish the results promised, but contained facts either distorted, exaggerated or misapplied), makes such false and misleading representations and statements as—

“ That ‘ Complete Life Building ’ contains the greatest number of facts ever put into a volume of its size,” providing a complete cure for indigestion, tuberculosis, rheumatism and a variety of other diseases named, without medicines, operations, exercises, or apparatus, and that it has cured such diseases, including tuberculosis, to the extent of 900,000 cases; .

That honest doctors everywhere prescribe it in place of drugs or operations;

That it will cure every curable malady and prevent every incurable malady, and that permanent cures of the various diseases can only be obtained in it;

That “ Instantaneous Personal Magnetism ” presents secrets of nature “ which will enable one to command success in any undertaking to which such knowledge or power may be applied; that every individual is composed of billions of electrons and that the rate at which such electrons vibrate and the harmony and the lack of harmony that exists between the various groups of electrons determines the character and efficiency of every individual and that the ability to raise or lower at will such vibrations is the measure of success and that the book conveys information which enables the individual to determine the correct rate of vibration for the group of cells within the human structure that connects with the desires of the individual, so that such individual may be utilizing the information the book contains, and absolutely command success ”; and

That as a result of study of the aforesaid publications “ You Can Sway and Control Others,” “ You Can Command Success,” “ You Will Become More Popular, More Prosperous, More Gloriously Successful Than You Ever Dreamed Possible,” “ I Will Make You a Fascinating Force in Social Life, a Powerful, Dominant, Commanding Figure in Your Profession ”; and

Makes such further statements in characterizing said publications as “ How to Develop a Magnetic Personality,” “ How to Control Others by a Glance,” “ How to Attract the Opposite Sex,” etc.

The use by respondent, as alleged, “ of the trade name Ralston University Press has had and has the capacity and tendency to mislead and deceive and has mislead and deceived into the belief that Ralston University Press has had and has some connection with or relationship to an institute of higher learning, to wit, a university known as Ralston University and that the publication and distribu-

tion of said books and of each and all of them have been and are activities of such university; and each and all of the representations and statements of respondent in prospectuses, pamphlets, leaflets, letters, circular and otherwise as described * * *, has and have had and has and have the capacity and tendency to mislead and deceive and has and have mislead and deceived into the belief that the said books offered for sale by respondent contain information, knowledge, secrets, methods, practices, principles, or suggestions by which anyone irrespective of condition, situation, station, or physical or mental development or learning can be enabled to enjoy unlimited perfect health, freedom from incurable diseases, recovery from curable diseases, and to command success in whatever occupation or profession they may be engaged, and to develop physical and mental powers by which others may be dominated or controlled, and to induce the purchase of said books or one or more of them in reliance on such erroneous belief," all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon Albert L. Pelton, trading under the name and style of Ralston University Press, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondent having entered his appearance and filed answer, testimony and documentary evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and evidence, briefs and arguments by counsel for the Commission and counsel for respondent, and the Commission having duly considered the same, now makes this its report, in writing, stating its findings as to the facts and conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now, and for several years last past, has been engaged in business at Meriden in the State of Connecticut, under the name and style of Ralston University Press, and in the course and conduct of such business he has offered for sale and sold in interstate commerce by mail, books of various kinds including

one called Complete Life Building and one called Instantaneous Personal Magnetism, causing them, when sold, to be transported from his said place of business to purchasers in the various other States of the United States than the State of Connecticut. In the course and conduct of said business respondent has been, and is engaged in competition in commerce among and between the various States of the United States with individuals, partnerships, and corporations engaged in the sale of the same or similar classes of merchandise, or books, in like commerce.

PAR. 2. Sometime prior to 1882 there was organized the Ralston Health Club. It was first conducted by a resident of Boston named Ralston. It was removed to the City of Washington, D. C., and one Webster Edgerly became its controlling factor. Clubs were formed throughout the United States and were known as Ralston Health Clubs. They were principally devoted to the consideration and promotion of plans for improvement of health. Many books were published by Edgerly under the name of Edmund Shaftesbury, dealing with questions of health and in them he outlined his views regarding diet, nutrition, sanitation, hygiene, and other subjects incidental to the maintenance of good health. He published books dealing, among other things, with so-called personal magnetism in which his views were expressed regarding the method to be followed, or the plan to be pursued for the development of mentality, of personality, and the acquirement of powers and facilities to insure success in life. Distribution of his books and circulation of his views and ideas constituted the principal function of the so-called Ralston Health Clubs which were also agencies for the conduct of propaganda resulting in the sale of his literary products. In 1898 he caused to be recorded at the office of the Recorder of Deeds of the District of Columbia, articles of incorporation for an institution known as the Ralston University of Expression. He and his wife Edna R. Edgerly were the principal factors in the organization of such institution. The evidence is meager regarding the character and activities of the so-called Ralston University of Expression. The institution ceased to function more than twenty-five years ago when in operation it maintained no such agency as the Ralston University Press.

On the 15th of March, 1925, long after the demise of the Ralston University of Expression, Webster Edgerly, by an agreement with respondent Albert L. Pelton, conveyed to him the right to print or reprint and sell certain books theretofore published by the said Webster Edgerly under the name of Edmund Shaftesbury, it being understood and agreed that certain royalties should be paid by respondent consisting of a certain percentage of cash received by

respondent from the sale of such books. It was stipulated and agreed in such contract that all new issues of the books under whatever titles agreed upon should be copyrighted by Webster Edgerly in whatever name he should select, but preferably as the Ralston Company, Ralston Company Press, Ralston University Press, or some similar name.

Thereafter respondent caused to be printed and published and to be distributed from his place of business at Meriden, Conn., to and among purchasers in the various other States of the United States, the books which their author Webster Edgerly had authorized him to print and sell.

He adopted and used for the sale of the book *Complete Life Building*, a circular or circulars formerly, or theretofore used to advertise such book by Webster Edgerly, or the Ralston Company. In this circular it is represented that by means of the study of *Complete Life Building* every curable disease may be cured and every incurable disease prevented. The most extravagant claims are made for the book in such circular or circulars.

Respondent, early in 1929, or approximately four months prior to the issuance of the complaint herein and approximately one year and a half before the hearing, discontinued the use of such circular or the representations it contained after his attention had been called to their character by a representative of the Commission, and at no time thereafter, or heretofore has he resumed any such representations as an inducement to the purchase of *Complete Life Building* or of any other book or books published by him.

Respondent has repeatedly made false representations and statements in his advertising literature which clearly implied connection with a university, and thereby, together with the trade-mark under which he operates or conducts his business, has furnished prestige, authority, and weight to the inducements he offers for the purchase of his books. These representations and statements, express or implied, are evidenced by a circular distributed by respondents as a part of his sales literature, which also reflects the purpose and intent, and the probable significance and effect of the use of the words "Ralston University Press."

It is headed "Achievements," below which appear the words "Ralston University Press" in large letters, and then in still larger letters "Our Golden Anniversary," beneath which appears "Fifty Years of Ralston History." The circular contains the following:

Responding to inquiries from many sources we have prepared this brief sketch of Ralston activities. For the benefit of thousands of new friends we give this short review of the long established Ralston enterprise of publishing private home training courses, embracing all human powers. Questions such as "What is the Ralston University Press?" "Are you a new concern?" "Do

you propagate some fancy cult or fad?" "What is Ralstonism?" etc., etc., come to us. Others with even more skeptical minds have assumed we were some temporary outfit of little responsibility, and might last a few months and then close our doors.

To all such we say—Ralston Research Work Started In Washington, D. C. in 1876—Fifty Years Ago—and has continued uninterrupted ever since.

Back of the Ralston executives, teachers, and owners, is over one million dollars financial responsibility—plus hundreds of thousands of satisfied students.

For over two decades we have been trail blazers in first supplying ambitious men and women with new knowledge of life, health, mental development, civilization—always far ahead of the common levels of thought.

"Ralston" was absolutely the pioneer concern in disseminating instructions in drugless treatment of sickness, using natural preventative methods for avoiding disease, and living to ripe old age.

In philosophy and higher thinking our work and teaching has long been recognized by able thinkers as being far in advance of the times. We were, by many years, advance teachers in the field so popular to-day, Applied Psychology. Only our students were provided years ago with facts which other teachers are bringing out now.

In a great department of personal power known to few outside of our own pupils—that of the vast sway and influence of Personal or Human Magnetism—we own and distribute the Only Recognized Library of Personal Magnetism Lessons in the World.

For upwards of twenty years there existed, almost within a stone's throw of the White House in Washington, D. C., the Ralston University, duly chartered under the laws of the District of Columbia. Here came Senators, Congressmen, heads of the Church, Thinkers, leading men and women of influence of America and Europe. They paid high fees for private instructions in certain powers which Ralston University developed.

Then appears in large letters "CHANGE OF LOCATION," beneath which appears the following:

But now, after forty years' location in the capital of the United States, the Ralston work is carried on in New England—rich in college and university traditions and seats of learning.

In a beautiful, small Connecticut city, Ralston University Press is located. Only a few miles away from us is Yale College, second to none in America. Near by are classical Trinity and Wesleyan Colleges. Just a little farther out is Harvard—and Dartmouth, Andover, Bowdoin, Exeter, Smith, Mt. Holyoke, Wellesley, Columbia, Tufts, and such notable sources of the best American education.

It is fitting that the Ralston University Press, continuing work started fifty years ago in Washington, D. C., should now continue here amidst the rich traditions of old New England's educational supremacy.

Letters of the strongest appreciation of Ralston University have been published in our catalogues in past years from United States Senators, Congressmen, Cabinet officers, Bishops and people of high business and social rank. At one period in our career, a Secretary of the Treasury of the United States presided at Commencement exercises of Ralston University, and awarded diplomas.

At another time, thirty-seven members of the U. S. Senate and House of Representatives, presented a large written testimonial of appreciation of Edmund Shaftesbury's instructions to them.

SHAFTESBURY'S COUNTLESS TRIUMPHS

As high as \$500 was paid for certain private facts which Shaftesbury had discovered during long years of research and experiment. One series of his lessons was read with so much delight by William E. Gladstone, that he purchased additional copies, presenting one to Queen Victoria. Phillips Brooks called this particular book "the new education."

As the years have passed, Edmund Shaftesbury's mind has steadily delved deeper into the mysteries of life and the powers of nature—and each successive literary production has added triumph to triumph. His educational courses are helping bring a new civilization on earth.

When you become a steady reader of our Home Training Courses, you are following in the footsteps of men—great and successful—throughout America and Europe. But you are not paying \$200 to \$500 for personal instructions as did high officials, wealthy business and professional men.

All that was formerly taught for huge fees—and a vast amount of newer discoveries—is now arranged in our books, and taught much more satisfactorily than by high-priced personal instruction.

Ralston books bring you in contact with more human experiences, and give you more practical, usable facts about life and success, than can be obtained in any other way or at any price.

Ralston is FIFTY YEARS OLD—has hundreds of thousands of satisfied patrons—and is adding thousands more every month. This evidence of solidity and satisfaction is adding thousands more every month. This is evidence of solidity and satisfaction that should convince the most skeptical.

THE RALSTON UNIVERSITY PRESS,
Meriden, Conn.

In truth and in fact there was no change of location for Ralston University, which as hereinabove stated, has not functioned for more than twenty-five years, if ever, as an actual operating university. There is no institution of learning at Meriden, Conn., known as Ralston University, or by any other name with which respondent is associated. He is a graduate of no university, college, or school of higher learning, and has received no diploma or certificate of efficiency representing or indicating that he has at any time taken, nor has he taken, courses of instruction in biology, chemistry, dietetics, nutrition, physical culture, economics, business finance, medicine, surgery, marketing, or any other subject or subjects embraced by, or relating to the various branches or lines of science, learning, or scholarship presented or discussed in any of the books or publications offered for sale or sold by him, nor has he conducted, or does he conduct at Meriden, Conn., any research work of any character, or any work that directly or remotely resembles the work formerly done by Webster Edgerly, or by, or through the Ralston Health Clubs. He has no knowledge, or information qualifying or tending to qualify him to prescribe or suggest a course of life or study of either

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physical or mental application or development. There is no executive other than respondent in his business, and no teachers. None is needed, since his work consists solely and exclusively in the sale and distribution, under the false and misleading name of Ralston University Press, of the books formerly published by Webster Edgerly as Edmund Shaftesbury, or others, and necessary administrative or clerical work in connection therewith.

PAR. 3. Use of the name Ralston University Press by respondent, accompanied by the representation that the location of Ralston University has been changed from Washington, D. C., to Meriden, Conn., with references to its appropriate situation in the vicinity of Harvard, Yale, and other institutions of learning and his use of the name University Press in connection with repeated and detailed circularization of purchasers and prospective purchasers with the history of the Ralston Movement, of Ralston work, and of Ralston University, has had, and has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that Ralston University still exists at Meriden, Conn., and that it is carrying on work of the same character as that formerly conducted by it in Washington, D. C., or the Ralston Clubs, or Ralston Company, or by Webster Edgerly, by means of, and through such agencies, and that the Ralston University Press is associated with an institution of higher learning known as Ralston University, or some other university or institution of higher learning.

Competitors of respondent, offering for sale and selling books relating to diet, nutrition, or health, generally, or relating to the subject of personal magnetism, without using the word "University" as a part of their trade names, or without any asserted or implied connection with, or relation to any university or institution of higher learning, have been and are prejudiced and injured by the diversion of business from them to respondent through his false and misleading use of the word "University," and the false and misleading implications of his representation concerning maintenance of Ralston University, and the continued prosecution of the Ralston work at Meriden, Conn.

CONCLUSION

The acts and practices described in the above and foregoing findings as to the facts have been, and are, all to the prejudice of the public and respondent's competitors, and have been, and are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress entitled "An act to

create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, evidence, briefs and arguments of counsel, and the Commission having filed its report stating its findings as to the facts and its conclusion that respondent has been, and is violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is therefore ordered, That respondent, Albert L. Pelton, trading as Ralston University Press, in connection with offering for sale or selling the books entitled "Complete Life Building," "Instantaneous Personal Magnetism," or any other book or books, in interstate commerce, cease and desist from using the word "University" in his trade name, or in any manner as descriptive of respondent's business, or any other word or words, group, or association of words signifying or implying that respondent is connected with any university or institution of higher learning, or that said books are issued, approved or sponsored by a university or higher institution of learning.

It is further ordered, That respondent, within 60 days from and after service of this order, file with the Commission a report in writing, setting forth in detail the manner and form of its compliance therewith.

IN THE MATTER OF

R. F. KEPPEL & BRO., INCORPORATED

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

Docket 1816. Complaint, May 2, 1930—Decision, Sept. 28, 1931

Where a corporation engaged in the manufacture of candy and in the sale thereof to wholesalers, jobbers, and retailers, sold assortments for resale to the ultimate consumer in the so-called "break and take packages," increasingly demanded by school children in preference to the "straight goods" assortments with their offer of greater value to purchasers than the majority secure from the "break and take packages," but lack of latter's gambling or lottery feature, through which chance selection of a certain piece entitles purchaser thereto without charge, to a more favorable price, to additional candy, or to merchandise included with the particular assortment, depending upon color of concealed center, legend or price contained within nontransparent wrapper, concealed presence within the candy of a penny, or such other device as may be utilized to bring about a more favorable result for the fortunate purchaser than that enjoyed by the majority, and supplied display cards for retailers' use, advising prospective purchasers of the nature of the plan employed in the particular "break and take" assortment involved; with the result that (1) competitors refusing to deal in "break and take" packages or assortments, through which children, principal consumers and purchasers thereof, are taught and encouraged to gamble, were injured by diversion of trade from them to it and other competitors using such practice in response to the constant and growing demand from small retailers for candy sold by lot or chance with which to attract the trade of children from their frequently nearby schools, and (2) freedom of fair and legitimate competition in the industry concerned was restrained and deterred:

Held, That such practices, under the circumstances set forth were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. G. Ed. Rowland and *Mr. Henry C. Lank* for the Commission.
Mr. George E. Elliott, of Washington, D. C., and *Mr. John A. Coyle*, of Lancaster, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Pennsylvania corporation engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers in various States, and with principal office and place of business in Lancaster, Pa., with using lottery scheme in merchandis-

ing, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, sells assortments of candies composed of a number of pieces of uniform size, shape, and quality, in which the chance selection by the ultimate purchaser or consumer may entitle such purchaser to one of the larger pieces included with the assortment, or to a piece free, or to a more favorable price than that paid by the majority, depending on the color of the inclosed concealed center, the legend or figure concealed within the individual wrapper, or the presence within a small number of the pieces of a sum of money, and supplies with said assortment display cards for retailers' use, advising prospective purchasers of the nature of the scheme employed in the particular assortment, and thereby places in the hands of others the means of conducting lotteries in the sale of its products in accordance with its sales plans above set forth.

Aforesaid products of respondent, as alleged, "thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to candies of respondent's said competitors because of (a) the chance of obtaining said larger pieces of candy or articles of merchandise free of charge, or (b) the chance of obtaining one of said pieces of candy free of charge or at the price of 1 cent or 3 cents, or 4 cents, rather than at the maximum price of 5 cents or (c) the chance of obtaining a sum of money as a prize," and said "alleged acts and practices of respondent," as charged, "are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondent, R. F. Keppel & Bro., Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The respondent having entered its appearance herein and filed its answer to said complaint, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for final hearing on the briefs of counsel for the Commission and respondent, and the Commission

having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, R. F. Keppel & Bro., Inc., is a corporation organized under the laws of the State of Pennsylvania, having its office and place of business in the city of Lancaster, State of Pennsylvania. Respondent is now, and for more than five years last past has been, engaged in the manufacture of candy in said city and State, and in the sale and distribution of said candy to wholesalers, jobbers, and retailers in the State of Pennsylvania and other States of the United States. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Pennsylvania to purchasers thereof in States of the United States other than the State of Pennsylvania. In so carrying on said business respondent is and has been engaged in interstate commerce, and is and has been in active competition with other corporations, firms, and partnerships also engaged in the manufacture of candy, and in the sale and distribution of the same in interstate commerce.

PAR. 2. Among the candies manufactured and sold by respondent is an assortment packed 120 pieces to each package labeled "chocolate penny men," Commission's Exhibit 1.¹ Each of the 120 pieces in each of said packages is a chocolate-covered cream candy molded into the shape of a man and retailing for 1 cent each. Among these 120 pieces there are four pieces in which 1 penny is concealed. In each of said packages as sold by the respondent to the wholesaler, jobber, and retailer is placed a card displaying a picture of a schoolboy, and bearing the label, "watch this boy, he has money in his pockets," Commission's Exhibit 2. The purchaser who procures one of said pieces of chocolate cream candy which contains a penny receives his money back, and in fact receives the piece of candy free of charge, and the purchaser who procures one of the 116 pieces of chocolate cream candy which do not contain any money, pays 1 cent for the said piece of candy.

The said pieces of candy in said packages are so manufactured as to make it impossible for the purchaser to ascertain in which piece of candy the coins are placed until after selection has been made and the piece broken. Thus, whether the purchaser pays for the piece of candy, or whether he receives it free of charge, is determined wholly by lot or chance.

PAR. 3. Another package of candy manufactured and sold by the respondent contains peanut bars and is labeled "1, 2, 3, big chief

¹ Exhibits not published.

60s," Commission's Exhibit 4. This candy is packed in boxes containing 60 pieces each, 10 of which retail at 1 cent each, 10 at 2 cents each, and 40 at 3 cents each. Each piece of said candy is uniform in size and quality, and is wrapped in nontransparent paper on which is printed the words "Chocolate covered peanut chew," Commission's Exhibit 6. Inclosed within the wrapper of each piece of said candy is a ticket or card showing the retail price of that particular bar of candy, viz, 1, 2, or 3 cents, Commission's Exhibit 6. Said candies are so packed and wrapped by respondent that when displayed it is impossible for the purchasing public to ascertain the price of the several bars of said candy prior to making a purchase or selection and removing the wrapper. Purchasers of said peanut bars pay the price which is printed on the ticket or card inclosed within the wrapper of the peanut bars, and some purchasers pay 1 cent, some pay 2 cents and some pay 3 cents for identical pieces of candy. Thus, the price which the purchaser pays for a bar of candy is determined wholly by lot or chance. In each of said packages as sold by the respondent is placed a display card bearing the legends "10 bars at 1 cent each, 10 bars at 2 cents each, 40 bars 3 cents each," Commission's Exhibit 5. On the bottom margin of said display card is a direction to the retail dealer to "Display this sales getter in end of box and watch this quality candy go."

PAR. 4. Prior to the manufacture and distribution of the "1, 2, 3 big chief 60s" referred to in paragraph 3 above, the respondent manufactured and distributed a similar package containing 40 bars of candy contained within similar wrappers, and containing a display card bearing the legend "3 big chief bars free, 5 bars at 1 cent each, 5 bars at 3 cents each, 5 bars at 4 cents each, and 22 bars at 5 cents each," Commission's Exhibit 7. Within the wrapper of each of said bars was a ticket showing whether the retail customer obtained the particular bar free, or at a price of 1 cent, or at a price of 3 cents, or at a price of 4 cents, or at a price of 5 cents. As packed by the respondent each piece of candy was uniform in size and quality, and the consuming public was unable to ascertain the price of a particular bar of said candy prior to making a selection and removing the wrapper. Purchasers of said bars of candy paid the price which was printed on the ticket or card inclosed within the wrapper of the bars of candy, and 3 purchasers received the bar of candy free, 5 paid 1 cent, 5 paid 3 cents, 5 paid 4 cents, and 22 paid 5 cents, for identical pieces of candy. Thus, the price which the purchaser paid for a bar of candy, or whether he received it free of charge was determined wholly by lot or chance. Respondent has discontinued the sale of this particular assortment of candy.

PAR. 5. Another package of candy manufactured and distributed by respondent is labeled "school days 200," Commission's Exhibit 8. This package contains 200 small chocolate cream candies, and also contains 8 chocolate-covered pieces of candy molded into the shape of a boy, 8 chocolate-covered pieces of candy molded into the shape of a girl, and 4 double pieces of chocolate-covered candy called "twins". The package also contains a "school companion," that is, a container in which are placed five lead pencils, a pen and penholder, a 6-inch ruler, and two erasers. In each of said packages the respondent places a display card bearing the legends "1 piece of cream with white center, 1 cent; 1 piece of cream with pink center and school boy or girl, 1 cent; 1 piece of cream with chocolate center and set of twins, 1 cent; the last piece of cream and school companion 1 cent," Commission's Exhibit 9. The 200 chocolate cream candies contained in said package are uniform in size and shape, 16 of the said chocolate cream candies having pink centers, 4 of the said chocolate cream candies having chocolate centers, and the remaining 180 pieces of chocolate cream candies having white centers. The purchaser who procures a piece of chocolate cream candy which has a pink center, receives in addition to the piece of candy, one of the chocolate boys or girls; if he procures a piece of chocolate candy having a chocolate center, he receives in addition to the piece of candy, one of the chocolate "twins"; if he purchases the last piece of chocolate cream candy, he receives in addition to the piece of candy, the "school companion;" if he procures one of the 180 pieces of chocolate cream candy having white centers, or does not purchase the last piece of chocolate cream candy, he receives only the piece of chocolate cream candy for his penny, without any additional prize or premium.

The said chocolate cream candies contained in said package are so manufactured by the respondent as to effectually conceal from the public the color of the center of the several chocolate cream candies until after the purchaser has made a selection and broken the particular piece selected. Thus, whether the purchaser receives a prize or premium of a larger piece of candy, or an article of merchandise, in addition to the piece of candy which he purchases, is determined wholly by lot or chance.

PAR. 6. The lottery or prize packages described in paragraphs 2, 3, 4, and 5 above, are generally referred to in the candy trade or industry as "break and take" packages. The packages or assortments of candy without the gaming, prize or lottery features in connection with their resale to the public are generally referred to in

the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 7. Numerous retail dealers purchase the packages described in paragraphs 2, 3, 4, and 5 above either from respondent or from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers display said packages for sale to the public as packed by the respondent, and with the display card furnished by the respondent, and the candy contained in said packages is sold and distributed to the consuming public in the manner suggested by respondent.

PAR. 8. All sales made by respondent, whether to wholesalers and jobbers, or to retail dealers, are absolute sales, and respondent retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber, or retail dealer. The packages are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public as suggested by the display card inclosed in each package without alteration or rearrangement. An examination of the packages or assortments of candy described in paragraphs 2, 3, 4, and 5 herein, as packed, assembled, and sold by respondent shows that said packages or assortments can not be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said packages or assortments.

In the sale and distribution to jobbers and wholesale dealers, for resale to retail dealers, and to retail dealers direct of packages and assortments of candy assembled and packed as described in paragraphs 2, 3, 4, and 5 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs and assembles such candy in the way and manner described, so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 9. The sale and distribution of candy by the retailers by the methods described in the findings as to the facts herein is a sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell

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candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. The retailers finding that they can dispose of more candy by the "break and take" method, buy from respondent, and others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease.

The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. There is a constant and growing demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 10. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools, and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gaming feature connected with the "break and take" package, and the possibility of winning a prize or premium, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. It has been found that in many instances children purchase a piece of candy, break it open, and if the center is not of the prize-winning color, throw it away and purchase other pieces of candy until a prize is obtained or their money gone; in other instances that children who win a prize or premium give it away to other children, and continue to purchase pieces of candy. The sale and distribution of "break and take" packages or assortments of candy or of candy which has connected with its sale to the

public the means or opportunity of obtaining a prize or premium by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 11. There are in the United States a large number of manufacturers of candy, who are manufacturing and selling "break and take" candy. The lottery or prize package product of each of these manufacturers is of the same general character as that produced by the respondent, and all of these lottery or prize packages are in direct competition with "straight goods" of the same general character; that is, the "break and take" goods usually appear in the form sold at retail at 1 cent each, or in the form of bar goods sold at 3 cents or 5 cents each, and these "break and take" goods are sold in direct competition with "straight" penny goods and 5 cent bars.

The pieces of candy in the "break and take" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy, or the quality of the candy in the "break and take" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break and take" goods.

PAR. 12. Respondent manufactures and sells a chocolate cream candy with which no gaming, prize, or lottery feature is connected. This candy is packed 120 pieces to the box, and retails at 1 cent per piece, as does the chocolate cream candy described in paragraph 5 above. Each individual piece of this "straight goods" penny candy manufactured and sold by respondent is larger than those in the prize or lottery packages, but the quality of the candy in the two packages is the same. The pieces of candy in the "break and take" packages are made smaller than those in the "straight goods" packages in order to compensate the manufacturer for the value and weight of the prizes or premiums which are distributed with the "break and take" packages. The purchaser of a piece of candy from a "break and take" package does not receive the same value for his money that he would if he purchased a piece of candy from a "straight goods" package, unless he received with the latter purchase one of the prizes or premiums, in addition to the piece of candy purchased. In the latter event he receives a value greatly in excess of the value he would receive if he purchased a piece of "straight goods" candy.

PAR. 13. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize packages or assortments of candy, and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" packages or assortments of respondent and other manufacturers of similar candy. The sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of "break and take" candy, and manufacturers of the former type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in sales of "straight goods" candy is principally due to the gambling or lottery feature connected with the "break and take" candy.

The purchasers and consumers of these two types of candy are principally children, and the children almost without exception purchase the candy which offers a chance to win a prize or premium rather than candy which does not have a lottery or gaming feature in connection with its sale, irrespective of the difference in size of the pieces, or the difference in quality of the two types of candy.

PAR. 14. Respondent manufactured and sold "break and take" packages or assortments of candy prior to the year 1925. In that year respondent discontinued the sale of this type of candy, and manufactured and sold only "straight goods" for a time. During this period its business showed a decided decrease in volume and profits, and it resumed the sale of "break and take" packages or assortments. Since its resumption of the manufacture and sale of this type of candy the sales of respondent have shown a continuously increased volume, each year, and at the present time 60 per cent of the sales of respondent consist of candy with a lottery or gaming feature in connection therewith. During the time respondent was not manufacturing and selling "break and take" candy, many of its competitors were continuing the sale of that type of candy, and in order to meet the competition of those manufacturers, and to make a profit in its business, respondent considered it necessary to resume the manufacture and sale of "break and take" candy.

PAR. 15. Respondent manufactures candy which it sells to wholesalers, jobbers, and retailers without any prizes or premiums, and without any lottery or gaming feature. In addition to said business, respondent conducts a jobbing department through which it distributes to retail dealers, in interstate commerce, the products of other candy manufacturers. The entire manufacturing business of the respondent for the year ending June 30, 1930, amounted to approximately \$391,000.

PAR. 16. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, R. F. Keppel & Bro., Inc., under the conditions and circumstances set forth in the foregoing findings of fact, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the testimony taken and briefs filed herein, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, R. F. Keppel & Bro., Inc., its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Selling and distributing pieces of candy containing coins or pieces of money, which said pieces of candy are packed and assembled in packages or assortments with other pieces of candy of similar size, shape, and quality not containing coins or pieces of money, for resale to the public by retail dealers.

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(4) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, pieces of candy of uniform size, shape, and quality containing within their wrappers tickets bearing different prices, or bearing the word "free," or phrases containing said word.

(5) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape, and quality, having centers of different color, together with larger pieces of candy, or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers, display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(7) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain pieces of candy in a package or assortment contain coins or pieces of money which are given as prizes to the purchaser of the particular piece of candy.

(b) That certain bars of candy of uniform size, weight, and quality may be obtained, free of charge, or for a price of 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, depending upon the price tag inclosed in the wrapper of the piece of candy selected by the purchaser.

(c) That upon the obtaining by the ultimate purchaser of a piece of candy with a particular colored center, that a larger piece of candy, or other article of merchandise will be given free to said purchaser.

(d) That upon purchasing the last piece of candy in the package or assortment, a larger piece of candy, or an article of merchandise will be given as a prize.

It is further ordered, That the respondent, above-named, within 60 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF
KNICKERBOCKER WATCH COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1960. Complaint, June 17, 1931—Decision, Sept. 23, 1931*

Where a corporation engaged in the purchase of watchcases and watch movements in the United States and in Europe, and in the sale thereof to jewelry wholesalers and jobbers in various States for resale to retailers and ultimate purchasers, sold watchcases labeled "Goldcraft", notwithstanding the fact that said products were neither made of gold nor gold plated; with the tendency and capacity to deceive ultimate purchasers as to the composition of said watchcases and to divert trade to it from competitors dealing in such articles truthfully branded or labeled, and otherwise injure such competitors, and with the result of placing in the hands of retail dealers therein the means of committing a fraud upon aforesaid purchasers:

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

Mr. E. J. Hornibrook for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged for more than one year last past in buying in the United States and in Europe watchcases and watch movements, and in selling the same to jewelry wholesalers and jobbers located in various States throughout the several States, and with principal office and place of business in New York City, with misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth has for more than one year last past caused to be stamped, branded, and labeled watchcases, neither made of gold, nor gold plated, with the term and designation "Warwick Watch Co.—Goldcraft"; and said watchcases are and have been for more than one year last past resold to the public by said retailers, stamped, branded, or labeled with said term and designation.

The term or designation "Goldcraft" so stamped, branded, or labeled on said watchcases, as alleged, "has the tendency and capacity to deceive ultimate purchasers of said watchcases or of watches contained in said cases, into the erroneous belief that said watchcases are made of gold, or are plated with gold, and to divert trade to said respondent from its competitors who sell and distribute in interstate commerce watchcases which are truthfully stamped, branded, or labeled, and otherwise injure such competitors, and the said use by respondent of the term or designation "Goldcraft"; causes to be placed in the hands of said retailers the means of committing a fraud upon ultimate purchasers of watches or watchcases so branded, stamped, or labeled"; and said "alleged acts and practices," as charged, "are all to the prejudice of the public and of the respondent's competitors and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission on June 17, 1931, issued complaint against the above-named respondent and caused the same to be served on June 18, 1931, in which complaint respondent was charged with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

By notice contained in said complaint against this respondent, respondent was notified and required within thirty days from the date of service of same, unless the time therefor were extended by order of the Commission, to file with the Commission an answer to said complaint, and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answers and failure to answer, said provision being set forth in said notice and providing in part as follows:

Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it, during the thirty-day period of time specified in the complaint herein, or at any time, made or filed answer to said complaint.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Knickerbocker Watch Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in the City of New York in said State. It is now, and for more than one year last past has been engaged in buying in the United States and Europe watchcases and watch movements and in selling the same to jewelry wholesalers and jobbers located in various States throughout the several States of the United States; causing said products, when so sold, to be shipped or transported in interstate commerce, from its said principal place of business in the State of New York to the said purchasers thereof located in States other than the State of New York. Such wholesalers and jobbers sell said watch movements and watchcases to retailers who, in turn, sell the same to the ultimate purchasers thereof. In the course and conduct of its said business, respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of watch movements and watchcases in interstate commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Said respondent in the course and conduct of its said business, as described in paragraph 1 hereof, has for more than one year last past caused to be stamped, branded, and labeled and now causes to be stamped, branded, and labeled the said watchcases with the term and designation "Warwick Watch Co.—Goldcraft"; and said watchcases are and have been for more than one year last past resold to the public by said retailers, stamped, branded, or labeled with said term and designation. Such watchcases are not made of gold, and are not gold plated.

PAR. 3. The term or designation "Goldcraft" so stamped, branded, or labeled on said watchcases has the tendency and capacity to deceive ultimate purchasers of said watchcases or of watches contained in said cases, into the erroneous belief that said watchcases are made of gold, or are plated with gold, and to divert trade to said respondent from its competitors who sell and distribute in

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interstate commerce watchcases which are truthfully stamped, branded, or labeled, and otherwise injure such competitors, and the said use by respondent of the term or designation, "Goldcraft," causes to be placed in the hands of said retailers the means of committing a fraud upon ultimate purchasers of watches or watchcases so branded, stamped, or labeled.

CONCLUSION

The acts and things done by respondent under the conditions and circumstances described in the foregoing are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 17th day of June, A. D. 1931, issued its complaint against Knickerbocker Watch Co., a corporation, respondent herein, and caused the same to be served upon said respondent on the 18th day of June, 1931, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The respondent not having filed an answer to the complaint and failure to file an answer within the time provided by the rules of practice and procedure by the Commission being deemed an admission of the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint, all of which the respondent had due notice and knowledge of, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Knickerbocker Watch Co., a corporation, its agents, representatives, and employees do cease and desist from doing directly or indirectly any and all of the acts designated and set forth in paragraph 1 hereof in connection with the

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sale or offering for sale of watchcases in interstate commerce, or within the District of Columbia, as follows:

PARAGRAPH 1. Using the word gold or the word goldcraft as a trade name or trade brand for watchcases or on labels, tags, containers, business stationery, or in advertising or otherwise to designate or describe watchcases which are not made in whole or in part of gold.

PAR. 2. It is further ordered that respondent, within 60 days from and after the date of service upon it of this order shall file with the Commission a report, or reports, in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
CONSOLIDATED BOOK PUBLISHERS, INCORPORATED
SUPPLEMENTAL FINDINGS AS TO THE FACTS AND CONCLUSION

Docket 1538. October 2, 1931

Supplemental findings and conclusion based on additional testimony taken pursuant to leave of court¹ and establishing use of methods condemned by the Commission in the original findings and order,² by respondent in the sale of its encyclopedia, through the subscription method, to subscribers throughout the United States, in competition with those who did not and do not employ such methods in the sale of their publications, with the capacity and tendency to and the effect of injuring such competitors through diverting from them to respondent sales of encyclopedias to persons believing respondent's false representations to be true, and purchasing its publication in and because of such belief, prejudicing the public against the subscription book industry as a whole and making it difficult for competitors to obtain interviews for soliciting the sale of their publications, and causing loss of confidence on the part of the public in the representations of competing publishers who do not use such methods or make such representations.

Mr. G. Ed. Rowland for the Commission.

Mr. Ramond P. Fischer, of Campbell, Clithero & Fischer, of Chicago, Ill., and *Mr. Charles J. Calderini* and *Mr. Edward W. Everett*, of Winston, Strawn & Shaw, of Chicago, Ill., for respondent.

SUPPLEMENTAL FINDINGS AS TO THE FACTS AND CONCLUSION

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, after having issued its complaint against respondent, Consolidated Book Publishers, Inc., said respondent having made answer thereto, testimony having been taken on behalf of the Commission and respondent, brief having been filed on behalf of both parties, and oral argument heard by the Commission, on May 6, 1930, made its findings as to the facts and conclusion, and issued its order to cease and desist against the respondent herein.

Thereafter respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit to review said order of the Commission, and the record in the case was certified to said court, briefs on behalf of both parties filed with the court, and the case orally argued before said court on April 23, 1931.

¹ Following appeal of the Commission's order, 14 F. T. C. 13, and decision of the Supreme Court in the *Raladam case*, 283 U. S. 643.

² Sale by respondent of its set under two different names, and use of the so-called "give-away" method of sale.

Thereafter, the Commission filed with the court an application for leave to adduce additional evidence to show that the use by respondent of the methods of sale found by the Commission to be unfair has the tendency and capacity to, and probably does in fact, divert trade from such competitors to respondent, and otherwise injure respondent's competitors in the sale of the books and publications which respondent and such competitors are offering for sale and selling competitively in interstate commerce, to the prejudice of such competitors as well as of the public.

Thereafter, on July 8, 1931, said court granted the said application of the Commission, and entered its order directing that the additional testimony be taken within 90 days from the date of said order.

Pursuant to the order of the said Circuit Court of Appeals for the Seventh Circuit, said Commission directed the taking of said additional testimony, and designated and appointed an examiner of said Commission to receive said additional testimony, and further ordered that the taking of said additional testimony begin in the city of Chicago, State of Illinois, on August 21, 1931.

Thereafter due notice was given attorneys for respondent, and upon the date and place set for said taking of evidence, respondent appeared by Messrs. Campbell, Clithero & Fischer, by Ramond P. Fischer, Esq., 1 North LaSalle Street, Chicago, and by Messrs. Winston, Strawn & Shaw, by Charles J. Calderini, Esq., 38 South Dearborn Street, Chicago, Ill. The Commission was represented by G. Edwin Rowland, Esq., of Washington, D. C. On August 24 and 26, 1931, Edward W. Everett, Esq., of the firm of Winston, Strawn & Shaw, also appeared for respondent.

Hearings were held in Chicago, Ill., on August 21, 24, and 26, 1931, at which hearings evidence was introduced by the Commission and respondent, in accordance with the application of the Commission to the United States Circuit Court of Appeals for the Seventh Circuit. Said evidence has been certified by the secretary of the Federal Trade Commission and is forwarded herewith to said court, together with this report and findings as to the facts and conclusion of the Commission drawn from said additional testimony.

Thereupon this supplemental proceeding came on for final hearing, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The original proceedings in this case show that respondent, Consolidated Book Publishers, Inc., sells its encyclopedia at retail under the name New World Wide Encyclopedia, throughout

the United States, and more especially in the States of Nebraska, Illinois, Wisconsin, Michigan, and New York. Respondent sells the same set of books at wholesale to the Times Sales Co. under the name Times Encyclopedia and Gazetteer, and said Times Sales Co. resells the set of books under that name to the public at retail. Respondent also supplies sales literature, supplements and research service to the Times Sales Co. The New World Wide Cyclopeda consists of eight volumes, and sold at retail at \$33.20 per set; a loose-leaf supplement service was also sold with the set which, if the subscriber wished to receive it, required an additional \$8 to be paid over a 10-year period for said service. The encyclopedia is sold by respondent to business and professional men by the subscription method of sale. The New World Wide Cyclopeda is not a technical nor recondite book, but is written in plain and elementary English, and is suitable for use by school children in seeking general information about subjects which come up in their school work.

PAR. 2. S. L. Weedon Co., with offices in Cleveland, Ohio, is engaged in selling encyclopedias intended primarily for school children. During the period covered by the record in this proceeding S. L. Weedon Co. published and sold an encyclopedia under the name New Students Reference Work, consisting of eight volumes, at prices ranging from \$39.75 to \$60.50 per set, depending upon the style of binding. Said New Students Reference Work was sold throughout the United States from August, 1923, to June, 1931, by the subscription method of sale. Said encyclopedia is designed especially for the use of students below college grade, but is a general reference work and was sold to the general public, as well as to teachers, libraries, and boards of education.

S. L. Weedon Co. has not at any time sold the New Students Reference Work under any other name, either to the public by the subscription method of sale, or to the jobbers or other companies at wholesale. Many years ago the name of the encyclopedia was changed from Students Reference Work to New Students Reference Work, when a new edition was published, and there were some sets under the name Students Reference Work in stock held by customers of the publishers, and these sets were sold under that name until disposed of. Since that time the encyclopedia has only been sold under the name New Students Reference Work.

In the distribution to the public of the New Students Reference Work, S. L. Weedon Co. sells the encyclopedia, and does not give it away, or offer to give it free to the subscriber. Neither does it send out letters soliciting prospects in which it offers to give the encyclopedia as an advertising feature; neither does the company itself, or through its salesmen, represent to prospective subscribers that a

certain number of people in a community have been chosen as a selected list to whom a set of its encyclopedia will be given free in exchange for a recommendation of the set.

PAR. 3. F. E. Compton Co., with offices in Chicago, Ill., is the publisher of Compton's Pictured Encyclopedia, now consisting of 16 volumes, but until recently consisting of 10 volumes. Said encyclopedia is a general school encyclopedia and is sold throughout the United States by the subscription method of sale. It is sold principally to parents for use in the home in connection with the education and instruction of their children, but it is a general reference work and is also sold to business men, teachers, and libraries.

F. E. Compton Co. has not at any time sold Compton's Pictured Encyclopedia under any other name, either to the public by the subscription method of sale, or to jobbers or other companies at wholesale. A volume of Cassell's Children's Book of Knowledge was introduced in evidence in an attempt to show that in content material it was identical with Compton's Pictured Encyclopedia. Under a contract with F. E. Compton Co. said Cassell's Children's Book of Knowledge is not permitted to be sold in the United States, and said set of books is not sold in this country in a commercial way or by the subscription method of sale.

F. E. Compton Co., in the distribution of Compton's Pictured Encyclopedia, sells the encyclopedia to subscribers and does not give it away, or offer to give it away; neither does the company itself, or through its salesmen, represent to prospective subscribers that the encyclopedia is being given away to any subscriber in return for a letter of indorsement; neither does the company send out letters to prospective subscribers in the name of the company with the words "advertising department" printed on them, said letters offering to give a set of the encyclopedia free to a selected few in the community as an advertising feature; neither does the company itself, or through its salesmen, represent to certain people in a community that a certain number of sets have been set aside for advertising purposes and will be given free if the subscribers buy some additional service of some sort.

F. E. Compton Co. has in the past given away with a subscription to Compton's Pictured Encyclopedia a course of study known as Compton's National Teachers Service, has given a weekly publication called Compton's Picture Newspaper with a subscription to said encyclopedia, and more recently has given to persons who answer its advertisement a booklet known as Book of Flags, which is a reprint of the article on flags which appears in the encyclopedia.

PAR. 4. W. F. Quarrie & Co., with offices in Chicago, Ill., is the publisher of The World Book, an encyclopedia in 12 volumes. Said encyclopedia is sold by the subscription method of sale throughout the United States, and is shipped from Chicago or branch offices of the company to subscribers. The World Book is sold principally to parents for use of children in school, but it is a general reference work and is also sold to business men, teachers, libraries, and professional men.

Up until about a year and a half ago, when a new edition was published under the name of The World Book Encyclopedia, W. F. Quarrie & Co. had never sold its encyclopedia under any name other than The World Book, either to the public by subscription method of sale, or to jobbers or other companies at wholesale.

In the distribution to the public of The World Book, W. F. Quarrie & Co. sells its encyclopedia to subscribers and does not give it away, or offer to give it away; neither does the company represent itself, or through its salesmen, that the encyclopedia will be given to subscribers free if the purchaser subscribes to a supplemental service or any other service; neither does the company itself, or through its salesmen, represent that as a special advertising feature a certain number of persons in a community had been selected to receive a set of The World Book free in return for a letter of indorsement; neither does the company itself, or through its salesmen, represent to prospective subscribers that a certain number of people of prominence and standing in a community have been chosen to receive a set of The World Book free in return for the use of their names.

In 1922 or 1923, during the course of a few months, The World Book was sold under the plan whereby it was represented to subscribers that if they subscribed to a supplemental service the set of books would be given free. This practice was abandoned after a few months use. From about September, 1925, to August, 1927, W. F. Quarrie & Co. gave a supplement known as The World Review, a weekly publication, free to subscribers to The World Book. At times, in order to stimulate sales, a book table is given free with a subscription to The World Book.

PAR. 5. It is admitted by respondent in the answer filed by it to the complaint in this proceeding that it is engaged in competition with other persons, partnerships, and corporations engaged in the sale and distribution in interstate commerce of encyclopedias.

PAR. 6. Many companies engaged in the sale of books by the subscription method of sale give with a subscription to said books a bookcase, book table, other book or books, or other articles as a premium to stimulate sales. Where such premiums are given the subscriber knows that he is paying for the set of books and that the other

article is a premium given as an inducement to subscribe. Some companies give the bookcase, book table, or other article without any additional charge, and other companies require that a subscriber pay an additional sum if he desires the other article. The offering of an additional article of some sort as an inducement to subscribers to the books differs from the method of sale practiced by this respondent and set forth in the original findings made by the Commission in this proceeding. In the method of sale found by the Commission to be used by this respondent the subscriber is told that he is being given the set of books free in exchange for a letter of recommendation, because he is a prominent citizen whose name respondent wishes to use, as a special advertising feature, or in consideration of his subscription to a loose-leaf service to keep the encyclopedia up to date. The fact is, as found by the Commission in the original proceeding, that the subscriber is not being given the set of books free and the only tangible article of value which the subscriber receives is the set of books, because the loose-leaf service and research bureau privilege are both contingent upon the subscriber sending in additional money or asking a question.

PAR. 7. Witnesses from several branches of the subscription book industry testified in this proceeding as to the effect the methods of sale used by respondent and found by the Commission to be unfair had upon the subscription book business. Included among these witnesses were the president of respondent, presidents, vice president, sales managers, resident manager and salesmen of other companies engaged in the sale of subscription books. Each of the witnesses was asked whether or not the method of sale used by respondent herein had an effect upon the business of competitors who do not use such a method, and certain of the witnesses testified that such a method of sale adversely affected the business of their particular companies and the subscription book industry as a whole, and certain other witnesses testified that such a method of sale did not adversely affect their sales or the subscription book industry as a whole, but, in fact, helped the sales of competing companies. Most of the witnesses testified that misrepresentation in the sale of books is detrimental to the best interests of the industry, and the president of respondent company testified that the method used by respondent, and found by the Commission to be unfair competition, was a misrepresentation. One of the witnesses who testified on behalf of respondent stated that any statement made by a salesman which enables him to secure an interview with a prospective purchaser is justified.

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PAR. 8. There are competitors of respondent engaged in the sale and distribution of encyclopedias in interstate commerce who do not use the same or similar methods of sale of said encyclopedias as used by this respondent and found by the Commission in the original proceedings in this case to be unfair. The Commission finds that the methods of sale used by respondent, as found in the original finding in this proceeding, do injuriously affect the business of competitors who do not use such methods. No specific injury to the business of any particular competitor was shown. It is impossible to show the exact extent to which the use of these methods by this respondent injured the business of competitors who do not use such methods.

CONCLUSION

The sales methods used by respondent herein, as found by the Commission in the original findings of fact in this proceeding, were used in the sale of its encyclopedia by the subscription method to subscribers throughout the United States in competition with other encyclopedias of a similar character sold in the same general territory. There are competitors of respondent who did not, at the time the testimony in this proceeding was taken, and who do not at this time, in the sale of their encyclopedias use the methods of sale which the Commission has found were used by the respondent. The use by respondent of the methods of sale found by the Commission in its findings of fact in the original proceeding in this case to have been used, has a capacity and tendency to, and does in fact, injure competitors who do not use such methods of sale, because:

(1) It diverts to respondent from its competitors sales of encyclopedias to persons who believe said false representations as made by respondent to be true, and who purchase respondent's encyclopedia in, and because of, such belief.

(2) It prejudices the public against the subscription book industry as a whole, and makes it difficult for respondent's competitors to obtain interviews for the purpose of soliciting the sale of their encyclopedias.

(3) It causes the public to lose confidence in representations of competing publishers who do not use such method or make such representations.

Complaint

IN THE MATTER OF
TEXTILEATHER CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1585. Complaint, Mar. 22, 1929—Order, Oct. 5, 1931*

Consent order requiring respondent corporation to cease and desist from using the names or terms Regaleather, Marvelather, Royaleather, Modeleather, Drillhyde, Glimphyde, Krafthyde, or word or term "Textileather" in connection with the offer or sale of products not made of leather; subject to permitted, appropriately qualified use of said last named word or term, as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Marshall, Melhorn, Marlar & Martin, of Toledo, Ohio, and *Mr. Harry J. Gerrity*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Textileather Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New Jersey with its principal office and place of business in the City and State of New York. It is engaged in the manufacture of imitation leathers hereinafter described, and the sale of said products to manufacturers of trunks, suitcases, satchels, upholstered articles, and other similar products, who manufacture many of said products in whole or in part of said imitation leathers. Said manufacturers are located at points in various States of the United States. Respondent causes its said imitation leathers when so sold to be transported from its said principal place of business and various branch places of business operated by it into and through States other than those in which are located its said places of business, to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of leather and imitation leather in commerce between and among various States of the United States.

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PAR. 2. The imitation leathers which respondent manufactures and sells as set out in paragraph 1 hereof, consist of coated fabrics made in imitation of, but containing no leather.

PAR. 3. Respondent names and designates its said product "Textileather," and names and designates certain kinds and styles of its said product with the names "Regaleather," "Marveleather," "Royaleather", "Modeleather", "Drillhyde", "Gimphyde", and "Krafthyde", respectively, and sells said various kinds and styles of its said product under said names and designations. Respondent also advertises said product under said names and its said trade name "Textileather" in sundry trade journals and in circulars, letters, price lists, and other printed matter sent by respondent to customers and prospective customers.

PAR. 4. Respondent's aforesaid vendees sell the trunks, suitcases, satchels, upholstered articles and other similar products which they make to retail dealers in various states of the United States, and said retail dealers in turn resell said articles to the consuming public.

PAR. 5. The use by respondent of the names and designations "Textileather", "Regaleather", "Marveleather", "Royaleather", "Modeleather", and "Drillhyde", "Gimphyde" and "Krafthyde", respectively, as set out in paragraph 3 hereof, places in the hands of respondent's aforesaid vendees and said retailers the means of committing a fraud upon retail dealers and eventually upon the consuming public by enabling said vendees and retailers to represent and sell the products made by them in whole or in part of said artificial leathers as in paragraph 1 hereof set out, to retail dealers and ultimate consumers as and for articles made in whole or in part of real leather.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof many who sell and supply real leather to manufacturers of trunks, suit cases, satchels, upholstered articles, and other similar products, and said manufacturers correctly represent to the retail trade that aforesaid products made by them are composed in whole or in part of real leather. There are others of said competitors who sell and supply to such manufacturers artificial leathers and who in nowise represent that the artificial leathers so sold by them are composed either in whole or in part of real leather. Above alleged acts and practices of respondent tend to and do divert business from, and otherwise injure said competitors.

PAR. 7. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the

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intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 22d day of March, 1929, issued its complaint against Textileather Corporation and caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. On the 25th day of March, 1929, respondent was duly and legally served with a copy of such complaint and notice requiring respondent within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of Rule III of the Commission's Rules of Practice with respect to answers, paragraph 2 of which reads as follows:

In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all of the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the method or methods of competition charged in the complaint.

The respondent on May 22, 1929, filed herein an answer on the merits.

On the 14th day of September, 1931, respondent filed herein an answer in the following language:

The respondent asks leave to withdraw its answer heretofore filed herein and refrains from further contesting this proceeding and consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the alleged violations of the law set forth in the complaint.

Thereupon, leave having been granted respondent to withdraw its said answer on the merits and this proceeding having been heard by the Federal Trade Commission upon the complaint of the Com-

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mission and the answer quoted above, and the Commission having concluded that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Textileather Corporation, its officers, agents, representatives, and employees shall cease and desist:

1. From using the names or terms Regaleather, Marveleather, Royaleather, Modeleather, Drillhyde, Gimphyde, Krafthyde, or any other word, phrase, or term of like import in connection with the advertising, offering for sale and sale or otherwise, in commerce among the several States of the United States or within the District of Columbia or with foreign nations of a product not made of leather;

2. From using the word or term Textileather as a trade name, brand or label or otherwise in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States or within the District of Columbia or with foreign nations of a product not made of leather and from using said word or term in letters, letterheads, stationery, in price lists, catalogues, magazines, trade journals, on samples or on such product or otherwise unless the word or term Textileather is always accompanied by words printed, stamped, or written in letters readily discernible; apt and adequate to indicate plainly that said product is not leather; but this shall not prohibit the use of the term Textileather as a part of the corporate name of the respondent so long as the same is not used to advertise or describe respondent's product.

It is further ordered, That the respondent Textileather Corporation, shall, within six months after service upon it of a copy of this order to cease and desist 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 hereinbefore set forth.

Complaint

IN THE MATTER OF

PARA PAINT & VARNISH COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 1932. Complaint, June 1, 1931¹—Decision, Oct. 5, 1931

Where a corporation engaged in the sale and distribution of ready mixed paints and varnish to retail dealers, represented the content of a certain paint so dealt in by it as 30 per cent carbonated white lead and 15 per cent zinc oxide, in label descriptions thereon purporting to show composition thereof and percentage of different ingredients making up same, facts being less than one-seventh of pigment content consisted of aforesaid ingredients and formula failed to disclose vehicle content of from 5.8 to 7 per cent by weight of water; with effect of misleading and deceiving the trade and general public as to said paint's composition and into buying same believing in truth of said representations, and with capacity and tendency so to do, and to divert trade from and otherwise injure competitors selling paint truthfully and accurately represented:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in the sale and distribution of ready mixed paints and varnishes to retail dealers in various States, and with principal office and place of business in Cleveland, with misbranding or mislabeling as to composition and ingredients, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent sets forth upon the labels of one of its paints formulae purporting to show both the pigment and vehicle content thereof, but which in fact grossly misstate the white lead and zinc oxide content, and fail to disclose the presence in the latter of some 6 to 7 per cent of water, with capacity and tendency to mislead and deceive the trade and general public, and with effect of so misleading said trade and public in respect of the ingredients of said paint, and their proportions, and with the further effect of misleading and deceiving the purchasing public into buying said paint believing in

¹ Amended.

the truth of such representations, and with the capacity and tendency so to do, and to divert trade from and otherwise injure competitors selling in interstate commerce paint truthfully and accurately represented; to the prejudice of the public and competitors.²

Upon the foregoing complaint, the Commission made the following

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on March 27, 1931, issued its complaint against Para Paint & Varnish Co., a corporation, respondent above mentioned, and on March 30, 1931, caused the same to be served upon respondent as required by law, in which complaint it was charged that respondent had been, and was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. Subsequent thereto and prior to the filing of any answer by respondent, the Federal Trade Commission, on June 1, 1931, issued an amended complaint against Para Paint & Varnish Co., a corporation, respondent above mentioned, and on June 2, 1931, caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint respondent was notified and required within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's Rules of Practice with respect to answer and failure to answer, said provisions being set forth in haec verba in said notice and providing in part as follows (Rule III, subdivision 3):

3. Failure of the respondent to file answer within the time as above provided for shall be deemed an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it during said thirty-day period specified

² Findings are in the same or substantially the same language as the allegations of the complaint, including the false and misleading formula alleged in the complaint.

in said notice, or at any time, made or filed answer to said complaint. It has at no time requested that the time within which it may file answer be extended, nor has the Commission granted any such extension of time.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid Rules of Practice, having duly considered the record and being fully advised in the premises, makes this report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its principal office and place of business in the city of Cleveland in said State. It is and for more than three years last past has been engaged in the business of selling and distributing ready mixed paints and varnish to retail dealers located at points in various States of the United States. Respondent delivered said products when sold by causing them to be transported from its place of business in the city of Cleveland, Ohio, to purchasers located at points in various States of the United States. In the course and conduct of its business respondent was and still is in competition with other corporations, partnerships, and individuals likewise engaged in the sale and distribution of ready mixed paints and varnish among the various States of the United States.

PAR. 2. Respondent in the course and conduct of its aforesaid business causes advertisements describing its ready mixed paints to be inserted in various periodicals, magazines, and trade journals of general circulation throughout the United States, and sends pamphlets, circulars, color cards, and price lists to customers and prospective customers advertising, describing, and soliciting the sale of said ready mixed paints. Respondent also solicits the sale and sells its ready mixed paints to dealers through traveling salesmen. Through said means the respondent obtains many orders for its aforesaid ready mixed paints from persons residing respectively in various States of the United States, and upon receiving said orders, the respondent fills the same and completes the sales thus made by causing the ready mixed paints so ordered and purchased to be transported from its place of business in the city of Cleveland, Ohio, to such vendees at their respective points of business location.

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PAR. 3. The ready mixed paints dealt in by respondent are put up in commercial tin can containers on which are printed the respective brand names of the paints contained therein. Among the paints dealt in by respondent is a ready mixed paint designated Para. Respondent described and now describes said Para ready mixed paint by means of a label affixed to said can containers, which remains thereon until the same reaches the consumer. Said label on said cans carries a description of the composition including the percentage of each ingredient of said paint. The label description of the composition of said paint and the percentage of each ingredient reads as follows:

C. base	Per cent	C. base	Per cent
Carbonated white lead.....	30	Refined linseed oil.....	60
Zinc oxide.....	15	Mineral spirits.....	24
Barium sulphate.....	27	Japan dryer.....	16
Calcium carbonate.....	16		
Magnesium silicate.....	18		100
	100		

PAR. 4. The said label description of the composition of respondent's said ready mixed paint is false in that it does not truthfully describe substantially or otherwise the true content of the cans to which it is affixed. The label description of the pigment content is grossly misleading and untrue in that less than one-seventh of the said content consists of white lead and zinc oxide, the remainder being lithopone, calcium carbonate, barium sulphate, and siliceous matter. The label description of the vehicle content is grossly misleading and untrue in that said vehicle contains approximately from 5.8 to 7 per cent by weight of water, the presence of which is not disclosed on the formula label.

PAR. 5. There are many competitors who manufacture and sell ready mixed paints to retail dealers for resale to the purchasing public, which competitors truthfully represent the content of the paints they sell.

PAR. 6. The said representations made by the respondent as set forth in this amended complaint are deceptive and misleading and have and had the capacity and tendency to and do mislead and deceive the trade and the general public into believing the paint contained in fact the ingredients designated on said labels and in the proportions represented thereon.

PAR. 7. The above and foregoing representations of respondent, in connection with the sale of its ready mixed paint in interstate

commerce as aforesaid, had the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into buying respondent's said paint under the belief that such representations were true and to divert trade from and otherwise injure competitors of respondent engaged in selling in interstate commerce paint truthfully and accurately represented.

CONCLUSION

The above acts and practices of the respondent under the conditions and circumstances herein set forth are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent Para Paint & Varnish Co., a corporation, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

It is now ordered, That respondent Para Paint & Varnish Co., a corporation, its officers, agents, representatives, servants, and employees cease and desist in the course or conduct of offering for sale or selling paint material or ready mixed paints in interstate commerce:

1. From representing by labels on cans containing paint offered for sale or sold by it, or in any other way, that the paint so offered for sale or sold contains 30 per cent carbonated white lead, unless and until the paint so represented contains as 30 per cent of its pigment content, carbonated white lead.

2. From representing by labels on cans containing paint offered for sale or sold by it, or in any other way, that the paint so offered for sale or sold contains 15 per cent zinc oxide, unless and until the paint so represented contains as 15 per cent of its pigment content, zinc oxide.

3. From representing by labels on cans containing paint offered for sale or sold by it, or in any other way, that the paint so offered for sale or sold contains certain ingredients in certain proportions,

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unless and until the paint so represented contains the ingredients in the proportions represented.

4. From representing by labels on cans containing paint offered for sale by it, or in any other way, that the paint offered for sale by it has a certain vehicle content in certain proportions, unless and until the paint so represented has the represented vehicle content in the proportions represented.

It is further ordered, That respondent Para Paint & Varnish Co., shall within 60 days after service upon it of a copy of this order file with the Federal Trade Commission, a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and to desist hereinabove set forth.

Complaint

IN THE MATTER OF

B. ROSENBERG, AN INDIVIDUAL, TRADING AS GLOBE
SUPPLY COMPANY

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

Docket 1963. Complaint, July 7, 1931—Decision, Oct. 5, 1931

Where an individual engaged in the business of assembling, selling and distributing knives and other cutlery to jobbers and wholesale and retail dealers, sold certain knives and cutlery made of carbon steel plated with chromium and so prepared as to imitate stainless steel, branded and labeled as "Stainless" or "Globe Stainless"; with tendency and capacity to deceive ultimate purchasers of said product into the erroneous belief that they were made of stainless steel, and to divert trade to him from competitors selling and distributing knives and cutlery truthfully stamped, branded, or labeled, and otherwise injure such competitors, and with result of causing to be placed in hands of retail dealers therein the means of committing a fraud upon ultimate purchasers of aforesaid products: *Held*, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. J. Butler Walsh for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged as Globe Supply Co. in the sale and distribution to jobbers, wholesalers and retail dealers in cutlery, and to the general public, of knives and other cutlery manufactured and sold in simulation of such products made of "stainless steel," and with principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to composition or nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in competition with other individuals and concerns dealing in products of the same kind and nature as himself, and in competition with those dealing in knives and other cutlery made of true stainless steel, i. e.,

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an alloy of steel containing not more than 0.70 per cent of carbon and from 9 to 16 per cent of chromium, come to be known to the general public as "stainless steel" and to be so designated on the blade of cutlery, describes and designates his aforesaid products as "stainless" or as "Globe Stainless" in his advertisements, newspapers and periodicals of national circulation, and in circulars and other like literature distributed among the trade and general public and on the blades of his knives and cutlery, and on the containers thereof; fact being cutlery so sold by him is made of carbon steel plated with chromium, and so prepared as to imitate the true or genuine stainless steel as above set forth.

The aforesaid designation, as alleged, is false and misleading and has the capacity and tendency to deceive purchasers of respondent's product into the belief that products in question are made of stainless steel as aforesaid, "and to divert to the respondent the trade of competitors engaged in selling in interstate commerce products of the same kind and nature as those of respondent which said products are truthfully advertised and described, and to divert to respondent the trade of competitors engaged in the manufacture and in selling in interstate commerce stainless steel cutlery made and manufactured as hereinbefore described and truthfully advertised and described," and said practices, as charged, are to the prejudice of the public and competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission on July 7, 1931, issued complaint against the above respondent and caused the same to be served on July 10, 1931, in which complaint respondent was charged with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

By notice contained in said complaint against said respondent, respondent was notified and required within thirty days from the date of service of the same, unless the time therefor was extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's Rules of Practice with respect to answers and failure to answer, said provisions being set forth in said notice and providing in part as follows:

Failure of the respondent to appear or file answer within the time as above provided for shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint. (Rule III, subdivision 3.)

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he during the thirty-day period specified in the complaint therein or at any time, made or filed answer to said complaint.

Thereafter this proceeding came on for final hearing and the Commission having duly considered the failure of respondent to appear and answer and deeming that thereby the respondent has admitted all of the allegations of the complaint and has authorized this Commission to find said allegations to be true pursuant to the rule aforesaid, and the Commission being fully advised in the premises makes this its report, stating its findings as to the facts and its conclusion therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, B. Rosenberg, an individual trading as Globe Supply Co., has his principal place of business in the City of New York, State of New York. He is now and for more than one year last past has been engaged in the business of assembling and selling and distributing to jobbers and wholesale and retail dealers, located in various States of the United States, knives and other cutlery; causing said products when so sold to be shipped or transported in interstate commerce from his principal place of business in the State of New York as aforesaid to the said purchasers thereof located in States other than the State of New York. Such jobbers and wholesale dealers sell said knives and cutlery to retail dealers, who, together with such retail dealers as purchase direct from respondent, sell the same to the ultimate purchasers thereof. In the course and conduct of his business, respondent is in competition with corporations, partnerships, and other individuals engaged in the sale and distribution of knives and cutlery in interstate commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Said respondent in the course and conduct of his said business as described in paragraph 1 hereof has, for more than one year last past, caused to be stamped, branded, and labeled and now causes to be stamped, branded, and labeled the said knives and cutlery with the term and designation "stainless" or "globe stainless" and said knives and cutlery are now and have been for more than one year last

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past resold to the public by said retailers, stamped, branded, and labeled with said term and designation. The term or designation "stainless" or "stainless steel" stamped, branded, or labeled on knives and cutlery denotes an alloy of steel containing not more than 0.70 per cent carbon and from 9 to 16 per cent of chromium, whereas the knives and cutlery sold by the said respondent are not in fact made of such alloy of steel but are made and manufactured from carbon steel plated with chromium and so prepared as to imitate stainless steel.

Par. 3. The term or designation "stainless" or "globe stainless," so stamped, branded, or labeled on said knives and cutlery has the tendency and capacity to deceive ultimate purchasers of said knives or cutlery into the erroneous belief that said knives or cutlery are made of stainless steel and to divert trade to said respondent from his competitors who sell and distribute in interstate commerce knives and cutlery which are truthfully stamped, branded, or labeled, and otherwise injures such competitors and the said use by respondent of the term or designation "stainless" or "globe stainless" as a stamp, brand, or label on his said knives and cutlery, causes to be placed in the hands of said retailers the means of committing a fraud upon ultimate purchasers of knives or cutlery so stamped, branded, or labeled.

CONCLUSION

The acts and things done by respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 7th day of July, A. D. 1931, issued its complaint against B. Rosenberg, an individual trading as Globe Supply Co., respondent herein, and caused the same to be served upon said respondent on the 10th day of July, 1931, in which complaint it is charged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The respondent not having filed an answer to the complaint, and failure to file answer within the time provided by the Rules of Practice and Procedure by the Commission being deemed an admission of the allegations of the complaint, and to authorize the Commission to find them to be true and to waive hearings on the charges set forth in the complaint, all of which the respondent had due notice of, and the Commission having made its findings as to the facts and its conclusion that the respondent had violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, B. Rosenberg, trading as Globe Supply Co., his agents, representatives, and employees do cease and desist from doing, directly or indirectly, any and all of the acts herein designated and set forth in connection with the sale or offering for sale in interstate commerce or in the District of Columbia of knives and cutlery, as follows:

PARAGRAPH 1. Using the word "stainless" as a part of his trade name or brand or otherwise as a stamp, brand, or label upon or for knives and cutlery or in advertising the same, unless such knives and cutlery are made of steel containing not more than 0.70 per cent carbon and from 9 to 16 per cent chromium.

PAR. 2. It is further ordered that respondent within 60 days from and after the date of service upon him of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
HELENA RUBINSTEIN, INCORPORATED

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

Docket 1884. Complaint, Dec. 12, 1930—Decision, Oct. 19, 1931

Where a corporation engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof to retailers throughout the United States; in pursuance of a merchandising system adopted by it and directed to fixing and maintaining prices specified by it for resale of its products, in cooperation with its dealers,

- (a) Fixed uniform prices at which its dealers should resell its products to the public and made it generally known to the trade that it expected and required all dealers handling said products to resell same at such fixed prices; and
- (b) Entered into contracts, agreements, and understandings with its dealers for the maintenance by them of said resale prices as a condition of opening accounts with them or continuing their supply of its products;

With the result that competition among its dealers in the distribution and sale of its products was suppressed, dealers were constrained to sell the same at the prices fixed by it and prevented from selling said products at such lower prices as they might desire, and purchasers thereof were deprived of the advantages in price which they would otherwise obtain from a natural and unobstructed flow of commerce under methods of free competition:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Henry M. Flateau, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation, engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof to retailers, and to some extent to wholesalers, and with principal office and place of business in New York City, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting use of unfair methods of competition in interstate commerce.

Respondent, as alleged, for many years last past, has enforced and enforces a merchandising system adopted by it directed to the fixing and maintaining of uniform minimum resale prices specified

by it for the sale of its said products, in the enforcement of which system it enlists and secures support and cooperation of retail and wholesale dealers, and of its officers, agents, and employees, and employs "the following means whereby it and those cooperating with it undertake to prevent and endeavor to prevent dealers from selling its products to the public at prices less than aforesaid retail prices established by" it, to wit:

"(a) Respondent fixes uniform minimum prices at which its products shall be resold to the public by its dealers and makes it generally known to the trade that it expects and requires all dealers handling said products to resell same at such fixed prices.

"(b) Respondent enters into contracts, agreements, and understandings with its dealers for the maintenance by them of said resale prices as a condition of opening accounts with such dealers, or continuing their supply of said products.

"(c) Respondent seeks and secures from dealers handling said products, information concerning and evidence of the failure of other dealers to observe and maintain said resale prices, and also employs its own salesmen and agents and employees to investigate and secure information and evidence of the failure of dealers to maintain said prices. The information thus obtained by respondent is used by respondent in exacting promises and assurances from price-cutting dealers that they will in the future maintain said resale prices, and in discontinuing business with those refusing to give such promises and assurances.

"(d) Respondent refuses to further supply said product to dealers who have failed to maintain said resale prices unless and until such dealers have given respondent satisfactory promises and assurances that they will in the future maintain and observe such resale prices."

According to the complaint, as a result of said acts and practices, said resale prices have been and are generally maintained, and, further, "the direct effect and result of said alleged acts and practices of respondent has been and now is to suppress competition among dealers in the distribution and sale of respondent's said products; to constrain dealers to sell said products at the prices fixed by respondent, and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said products of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce of said products under methods of free competition," all to the prejudice of the public.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission on the 12th day of December, 1930, issued its complaint against the respondent, Helena Rubinstein, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed, testimony was heard and evidence was received in support of the charges of the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing on briefs and oral argument of respective counsel, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Helena Rubinstein, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business in the City of New York in said State. It is engaged and has been engaged since its incorporation in the manufacture of cosmetics and toilet preparations, and the sale and distribution thereof from its principal place of business to retailers of such products throughout the United States.

It causes its products, when sold, to be transported from its principal place of business in interstate commerce into and through States of the United States other than the State of New York to the purchasers thereof at their respective locations. In the course and conduct of its said business respondent has been and is in competition with other individuals and corporations located in the United States and engaged in the manufacture, sale, and transportation of cosmetics and toilet preparations in interstate commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has for many years last past, in the course and conduct of its said business, enforced and now enforces a merchandising system adopted by it, of fixing and maintaining certain prices fixed and specified by it at which its products shall be sold by the dealers purchasing such products from respondent, and respondent

enlists and secures and has enlisted and secured the cooperation of its dealers in enforcing said system.

In order to carry out said system respondent has employed and still employs the following means whereby it and those who are cooperating with it have undertaken to prevent and have prevented dealers from selling said products to the public at prices less than the prices specified and established by the respondent:

(a) Respondent fixes uniform prices at which its dealers shall resell said products to the public and makes it generally known to the trade that it expects and requires all dealers handling said products to resell same at such fixed prices.

(b) Respondent enters into contracts, agreements, and understandings with its dealers for the maintenance by them of said resale prices, as a condition of opening accounts with such dealers, or continuing their supply of such products.

PAR. 3. The direct effect and result of the above acts and practices of respondent have been and are to suppress competition among its dealers in the distribution and sale of respondent's products, to constrain dealers to sell said products at the prices fixed by respondent and to prevent them from selling such products at such lower prices as they may desire, and to deprive the purchasers of said products of the advantage in price that they would otherwise obtain from a natural and unobstructed flow of commerce in said products under methods of free competition.

CONCLUSION

The practices of the said respondent under the conditions and circumstances of the foregoing findings are to the prejudice of the public and of respondent's competitors and constitute a violation of the act of Congress approved September 26, 1914, entitled "an act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and briefs, and oral argument by respective counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

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It is now ordered, That the respondent, Helena Rubinstein, Inc., its officers, agents, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, cease and desist from entering into or procuring from its dealers contracts, agreements, understandings, promises, or assurances that respondent's products, or any of them, are to be resold by such dealers at prices specified or fixed by respondent.

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
LENAPE HYDRAULIC PRESSING AND FORGING
COMPANY

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

Docket 1964. Complaint, July 10, 1931—Order, Oct. 24, 1931

Consent order requiring respondent to cease and desist from making representations in catalogues, advertisements or otherwise, through words, diagrams, etc., falsely implying that the steel nozzles offered and sold by it in interstate commerce are seamless and made in one piece; all as in said order more particularly set forth.

Mr. Harry D. Michael for the Commission.

Mr. Dwight B. Galt, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Lenape Hydraulic Pressing & Forging Co., a corporation, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act, and states its charges as follows:

PARAGRAPH 1. That respondent, Lenape Hydraulic Pressing & Forging Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and has its factory and principal place of business at Lenape, in the State of Pennsylvania.

PAR. 2. That said respondent is now and has been engaged for several years last past in the manufacture of forged steel products and in the sale thereof in interstate commerce in and among the various States of the United States, and said respondent causes and has caused its said products when so sold to be transported in interstate commerce from its said place of business in Pennsylvania, to, into, and through States of the United States other than Pennsylvania to persons, firms, and corporations to whom or to which said products are or have been sold. That one of the products so manufactured, sold, and transported in interstate commerce by respondent as aforesaid is known and described by respondent as forged steel

nozzles. That said nozzles are used for making outlet connections for boilers and the like in which use they are subjected to great steam pressure.

PAR. 3. That during the time above mentioned other individuals, firms, and corporations in the various States of the United States are and have been engaged in the manufacture and sale of forged steel nozzles similar in kind and as to purpose of use to those manufactured and sold by respondent as stated above. That such other individuals, firms, and corporations have caused and do now cause their said products when sold by them to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof. That said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said product with said other individuals, firms, and corporations.

PAR. 4. That the respondent herein, during the time above mentioned, in soliciting the sale of and in selling its said nozzles as aforesaid, makes use of and has made use of representations which imply that its said nozzles are made of one solid piece, and which are calculated to and do create such belief among the purchasing public, when in truth and in fact said nozzles are constructed of two pieces, and are so made and constructed that the seams or places of welding are not evident on casual examination. Said representations of respondent consist of the use of the expression "forged steel nozzles," without qualification, in naming, designating, and describing its said product together with the following statements:

A solid seamless wall against steam and gasket

By adopting the LENAPE Forged Steel Nozzle you are assured
that the steam will come in contact with a

ONE-PIECE SOLID WALL

and also together with diagrams of various sizes and shapes of nozzles manufactured and sold by respondent which depict the same as being of solid construction by means of crosslining running in the same direction instead of with lines running in different directions indicating that said nozzles are welded and are in two pieces. That respondent causes and has caused such representations to be made in magazines and/or catalogues which are and have been circulated in interstate commerce to purchasers and prospective purchasers of said product.

PAR. 5. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that its said nozzles are seamless and that they are made of one piece. That there are among

the purchasers and users of such products those who believe that such nozzles constructed of one solid piece are better than those constructed of two pieces and who prefer such construction. That said representations of respondent have had and do have the capacity and tendency to induce members of the public to purchase and use the product of respondent because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale, in interstate commerce, of products similar in kind and as to purposes of use to those of respondent.

PAR. 6. That the above acts and things done by respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 10th day of July, 1931, issued its complaint against Lenape Hydraulic Pressing & Forging Co., a corporation, respondent herein, and caused the same to be served upon said respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On September 1, 1931, respondent filed herein a formal written answer to said complaint. On October 14, 1931, said respondent filed herein a petition to withdraw its said answer and asking that a new answer therewith submitted be filed in lieu thereof, which said petition was granted by the Commission and said new answer was accordingly filed. By said new answer respondent elected to refrain from contesting this proceeding and consented to the issuance of an order to cease and desist as to the practices set forth in the complaint herein; and the Commission having considered said new answer and being fully advised in the premises:

It is ordered, That respondent, Lenape Hydraulic Pressing & Forging Co., a corporation, its agents, employees, or successors do cease and desist from making representations in catalogues, advertisements, or otherwise by use of words, diagrams, pictures, or otherwise, in connection with the sale or offering for sale of its steel nozzles in interstate commerce, which imply that such nozzles are seamless and

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made in one piece unless such nozzles are in fact seamless and made in one piece.

It is further ordered, That said respondent in describing its said product, in the connection aforesaid, do cease and desist from using the following expressions, to wit:

A solid seamless wall against steam and gasket

By adopting the LENAPE Forged Steel Nozzle you are assured
that the steam will come in contact
with a ONE-PIECE SOLID WALL

or other similar expressions as well as diagrams of said nozzles with all cross-hatching running in the same direction, or other method of illustrating solid construction, unless its said nozzles are in fact made in one piece or unless such representations are used in connection with such general context or with such explanatory matter that the purchasing public is fully informed therefrom that said respondent's nozzles are constructed in two pieces instead of being seamless forgings made in one piece.

It is further ordered, That respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

JOHN G. HOMAN, TRADING UNDER THE FIRM NAME AND
STYLE OF NEW SCIENCE INSTITUTE

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1677. Complaint, May 31, 1929—Decision, Oct. 26, 1931

Where an individual engaged in the sale of appliances or devices for the treatment of hernia or rupture; in his advertisements in magazines, newspapers, leaflets, letters, etc.,

- (a) Represented that methods, trusses and appliances other than his own were old-fashioned, cruel, unclean, generally unscientific and actually productive of serious injury, and made such statements in describing his own device or devices as "No unclean bulky leg-strap", "No cruel springs", "No more huge ham-like pads", facts being that the consensus of professional, expert, and informed opinion in the medical and surgical professions, and elsewhere was that the truss constituted the correct palliative treatment for rupture, might in some cases of reducible hernia lead to permanent relief, depending upon youth of patient or other factors, and had long been prescribed by physicians and surgeons generally, and offered and sold as a part of the regular stock of ordinary drug and surgical supply stores throughout the United States, and was neither old-fashioned, barbarous, torturous, cruel, unclean, obsolete, nor unscientific;
- (b) Offered his appliances and devices as and for appliances other than trusses and featured said devices under the trade name Magic-Dot as a new discovery revolutionizing the so-called old-fashioned methods, representing that his appliances "seal" the rupture, avoid the alleged "harsh pressure" involved in other methods and devices, allow free circulation, are unique because devices "for human beings" by means of which "an Ohio scientist is helping nature to rescue thousands of ruptured victims from the eternal horrors of many dangerous, cumbersome trusses and other torturous harness-like contraptions," and constitute latest development of science for treatment of hernia, facts being his said appliances and devices were in fact trusses, Magic-Dot device was patented for use in connection therewith, and his said devices were neither development of, nor approved by science nor useful for treatment of rupture in its advanced or serious stages;
- (c) Represented that wearer or user might easily bend, cough, jump, or sleep in any position without fear of having appliance slip and that thousands of sufferers had been cured through its agency, and set forth depictions of people engaged in athletic exercises or physical movements requiring and indicating strength, agility, muscular control, normal abdominal walls and conditions, especially in localities where hernias or ruptures usually occur, together with such captions as "Ruptured 38 years ago. Is this a miracle?" and such descriptive statements as, "A sudden strain at the age of 12. Thirty-eight years of pain and discomfort. Now at 50 relief at last", and others of similar tenor, attributing the purported remarkable recovery and advance in health and prosperity to abandonment of the so-called horrible

Complaint

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truss and use of said individual's device, and distributed among purchasers booklets containing alleged communications from rupture sufferers to the effect that they had been cured by his appliances;

Facts being devices in question directly or impliedly held out as effecting cures in all cases of reducible hernia, irrespective of age or other conditions, were useless either for curative or palliative purposes in the case of 95 per cent of those afflicted, and the self-diagnosis and self-measurement called for and encouraged and use of device in question involved danger of prospective purchaser's confusing his ailment with one of a number of others, and increased danger, in the absence of personal and professional or expert attention in the fitting and application of the truss, of reducible hernia failing to receive proper support, with resulting harm or possible strangulation, with its threat to life and necessity for immediate medical service and/or operation;

With capacity and tendency to deceive purchasers and prospective purchasers into belief that trusses or appliances other than those offered and sold by said individual were old-fashioned, cruel, unclean, inefficient, and unscientific, and that his appliances could and would support every reducible hernia and generally effect a cure thereof, and to induce purchase thereof in reliance upon such erroneous belief, and to harass, embarrass, and discredit competitors offering and selling trusses recognized by scientists and medical and surgical profession as the correct palliative treatment for hernia, and to divert trade from them to him, and otherwise hinder them because of his false and slanderous misrepresentations and statements concerning their products:

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

Mr. James M. Brinson for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Steubenville, Ohio, in the manufacture of an appliance described as "Magic Dot" for use in the treatment of hernia or rupture, and in the sale thereof among the various States, with advertising falsely or misleadingly as to qualities or properties of its product and those of its competitors, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in its advertisements in magazines, newspapers, pamphlets, leaflets, circulars, etc., makes false and misleading statements concerning its aforesaid appliance to the effect that same is a new discovery or invention, which revolutionized old methods (referring particularly to the

truss), condemned as old-fashioned, awkward, harsh, preventing free circulation, and the full operation of the healing processes of nature; whereas respondent's appliance "seals" the rupture, "can not slip off", is anchored securely to the acute point while allowing free circulation, is an invention of "an American scientist of note", rescuing thousands of rupture victims from the "eternal horror of many dangerous, cumbersome trusses and other torturous, harness-like contraptions", is worn without pain or inconvenience, and permits the wearer to safely bend, cough, jump, or sleep in any position without fear of the appliance slipping down, etc., displaying in its advertisements representations of men engaged in athletic exercises requiring and indicating strength, agility, muscular control and normal abdominal walls and conditions particularly in localities where rupture usually occurs.¹

The facts are, as alleged, that in the case of reducible, as contrasted with irreducible or strangulated rupture, safely treated only by surgical operation, the use of the aforesaid so-called truss, described as old-fashioned and cruel, is, according to the consensus of opinion among the great body of competent men in the medical and surgical profession and other scientific professions concerned in the treatment or care of the body, "the correct palliative treatment which in cases of reducible hernia or rupture may in some instances become a curative agent by which permanent relief is effected, depending upon the youth of the sufferer or the persistence or tenacity with which the protrusion, tumor or hernia, after having been returned to the abdominal cavity, is retained therein." Neither respondent's said appliance nor any other appliance can insure such invariable results as claimed by respondent for his said device, nor will the use thereof enable the sufferer safely to engage in coughing, running, or any of the athletic performances or movements specified, or cure or benefit those using the same. It has neither the sanction of scientists, nor of any reputable medical surgical authority, and can not hold in its place "within the abdominal cavity the returned hernia or to so maintain its own position that violent exercise safely may be taken by the sufferer in reliance on such security"; and use thereof by one suffering from reducible rupture will probably lead said person to "suffer immediate conversion into irreducible rupture if subjected to such physical exertion, thereby precluding curative treatment except by surgical operation", and said appliance is "inadequate, insufficient and useless either for curative or palliative purposes."

¹ Representations and depictions alleged are described in the "findings," *infra*, at p. 329.

According to the complaint "the above and foregoing representations of respondent by means of which he has offered for sale and is selling his product, Magic-Dot especially in view of his trade name, New Science Institute, have had and have the capacity and tendency, to mislead and deceive, and have misled and deceived, the public into the belief that prevailing and customary methods for the treatment of hernia or rupture have been and are insufficient, useless, cruel, barbarous and productive of serious injury and that the appliance, Magic-Dot, represents the latest development of science in the treatment of said trouble, and to induce, and have induced, its purchase in reliance on such erroneous belief, and to divert trade from and otherwise injure competitors of respondent"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon John G. Homan trading under the firm name and style of New Science Institute, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondent having entered his appearance and filed answer, testimony and documentary evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony, and evidence, briefs, and argument by counsel for the Commission and counsel for respondent, and the Commission having duly considered the same now makes this its report, in writing, stating its findings as to the facts and conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now, and for several years last past has been engaged, with his principal office and place of business at Steubenville in the State of Ohio, in the manufacture, and sale, in commerce among the various States of the United States, of an appliance or appliances described as Magic Dot for use in the treatment of hernia usually known as rupture, causing them, when sold, to be transported from his said place of business to purchasers in the various States of the United States other than the State of Ohio.

In the course and conduct of such business respondent has been, and now is engaged in competition with individuals, partnerships, and corporations offering for sale or selling in like commerce, so-called trusses or other appliances or devices for treatment of hernia or rupture.

PAR. 2. On January 17, 1925, respondent applied in the United States Patent Office at Washington for a patent on his appliance known as Magic Dot. It was represented in his application that the invention was for "means for retaining a supporting pad or like therapeutic device in place, and especially relates to a device to be used in connection with present forms of hernial trusses and body supports."

There was registered on May 31, 1927, in the United States Patent Office, on the application of respondent, the words "Magic Dot" as a trade-mark. In his application respondent represented that it was a trade-mark for "appliances for retaining supporting pads and trusses in position." Respondent further represented in such application that the trade-mark had been continuously used in his business since July 10, 1919, and that the trade-mark is applied to the goods by placing the goods in envelopes on which the mark is printed. Thereafter respondent caused his appliance to be inclosed when sold, in a wrapper bearing the words "This cover contains valuable goods from New Science Institute." It also bore the trade-mark Magic Dot.

The appliance now sold by respondent differs materially from the one sold by him when complaint issued and is less effective, but both have been, and still and now are, sold under the trade name or designation Magic Dot. Respondent sells his original device now only when orders therefor are received from those who have used them. His principal business consists in the sale of an appliance or device more nearly resembling the standard truss than his initial or original device also sold as Magic Dot.

It is the practice of respondent to offer and sell, when practicable, to those unwilling to purchase or use either of his Magic Dot appliances, another one which he calls Electra, which is also a truss. He also offers for sale and sells a device known as Sanatape, which is a leg strap to be used, as declared by respondent, in supporting a very low rupture.

While the appliances of respondent or his devices for the treatment of hernia or rupture, have been and are trusses, and his appliance or device Magic Dot was patented to be used in connection with the present form of hernial trusses, respondent has offered his appliances or devices for sale by means of advertisements in magazines, newspapers, pamphlets, leaflets, letters, circulars and otherwise,

under the name of Magic Dot as and for appliances other than trusses. He has featured the device Magic Dot, together with a rubber pad, or his later appliance which he now sells as Magic Dot, Magic Dot Outfit, Airtex-Magic Dot Combination, or New Science System. It has been, and is his practice to employ as his principal method of competition, false, misleading, and disparaging representations regarding trusses, the products of his competitors, and false and misleading representations and statements regarding the merits or efficiency of his own appliances, which he contrasts with trusses, the products of his competitors, declaring his own appliances or devices free from the cruel and unscientific deficiencies of trusses. Such method of competition is exemplified in representations and statements to the following effect appearing in the advertisements of his products, to wit:

That the methods of helping hernia prior to the introduction by respondent of Magic Dot have been and are old-fashioned;

That said product is a new discovery or invention which has revolutionized said old-fashioned methods;

That before such discovery or invention of his appliance, the customary or prevailing methods so described by respondent as old-fashioned, subjected sufferers from such affliction to the use of "awkward steel springs, weighty cushions, unclean leg straps and other makeshift devices that were always slipping off the wound";

That the so-called old-fashioned method involved "harsh pressure" which prevents free circulation of the blood and thereby a full operation of the healing processes of nature;

That the appliance of respondent instead of "pressing" rupture, reduces it by the so-called new science method which "seals" the rupture; and that such "sealing" method was impossible with the so-called "old-fashioned" appliances;

That it is impossible for Magic Dot to slip off, but on the contrary it "anchors to the acute point of rupture," and "allows free circulation to tend to knit the tissues over the wound, and heal it much like every other wound is permitted to heal";

That this quality or ability of the appliance, Magic Dot to seal the rupture and to anchor securely to its acute point, while allowing free circulation of the blood to promote healing processes is an "exclusive advantage, which science says is important";

That there is no other appliance like it in the world, particularly because it is one for human beings, by means of which "an Ohio scientist is helping nature to rescue thousands of rupture victims from the eternal horror of many dangerous, cumbersome trusses and other torturous, harnesslike contraptions";

That all other appliances than Magic Dot for use in treatment of hernia or rupture are cruel, barbarous, torturous, unadapted to human beings, actually productive of serious injury and that science has proclaimed its approval of Magic Dot as a departure from the ineffective and agonizing methods employed in treatment of hernia or rupture before "an American scientist of note" disclosed his invention to the public and offered it for sale to sufferers from said affliction;

That its use or application to rupture, while sealing it securely without interference with the circulation of the blood is attended by no pain, inconvenience, or discomfort, and the wearer or user may safely bend, cough, jump, or sleep in any position without fear of the appliance slipping down and that thousands of sufferers from hernia or rupture have been healed and are being healed through its agency.

Respondent has also caused to be inserted in such advertisements in Psychology, Physical Culture, and other magazines and newspapers of general circulation in the various States of the United States, pictures, illustrations, or representations of men engaged in athletic exercises or physical movements requiring, and indicative of strength, suppleness, agility, muscular control, normal abdominal walls and conditions, particularly in the localities where hernia or rupture usually occur. In connection with and immediately before such pictures, illustrations or representations appear in extremely large black and conspicuous letters, statements such as the following.

**RUPTURED THIRTY-EIGHT YEARS AGO,
IS THIS A MIRACLE?**

with the further statement in smaller letters, but also large and conspicuous:

**A SUDDEN STRAIN AT THE AGE OF TWELVE * * *
THIRTY-EIGHT YEARS OF PAIN AND DISCOMFORT—
NOW AT FIFTY, RELIEF AT LAST!**

Respondent has published and publishes in said magazine and others, an advertisement wherein is presented under the caption:

BOGGSVILLE MYSTERIOUS STRANGER EXPOSED

an illustration of a man leaving his home, with his family assembled on a porch in front of it, expressing unrestrained joy and delight, his wife exclaiming, "Yes, children, that is papa since he quit wearing a truss," as he apparently proceeds along the adjacent street with the speed and vigor of a professional pedestrian. His neighbors are displayed gazing from windows with expressions of amazement on their faces, obviously caused by his physical vim and

prowess, while acquaintances are pictured standing in groups as he races by them, discussing his remarkable advance in health and business which in the picture they are all represented as declaring due to the abandonment of the so-called "horrible" truss and his rescue therefrom by Magic Dot after having suffered 10 years from rupture with incidental decline in the efficiency of his work and amount of his compensation.

Respondent has caused to be circulated and distributed among purchasers and prospective purchasers in the various States of the United States pamphlets or booklets wherein he has made statements such as the following:

A new kind of "finger-tip" called Magic Dot. Wonderfully simple, amazingly effective. So tiny it would take a handful to weigh an ounce. So small it takes a number of them to equal the weight of a silver quarter. Yet it anchors and holds rupture support so it can't skid sideways.

Hence, no unclean bulky leg straps. It enables clean people to be clean. No cruel springs.

No more huge hamlike pads made big so that in case of skidding they would still be big enough that some part of their enormous surface would cover the rupture. No plug pads to prevent skidding by "boring" into the very wound you seek to heal.

Magic Dot is instantly put on—or instantly taken off.

Because Magic Dot means so much in helping nature cure reducible rupture, you will wish to read and know about the interesting New Science System of which it is a part. And as you read we shall be glad to tell you also, what others say.

In a booklet distributed by respondent among purchasers and prospective purchasers containing a description of his appliances with directions for their use, there appears the following language:

It is believed that there is no case of reducible rupture that this outfit cannot successfully support.

In advertisements in the Beacon, a newspaper of Wichita, Kans., the Post, a newspaper of Cincinnati, Ohio, the Record, a newspaper of Philadelphia, Pa., the Courier Express, a newspaper of Buffalo, N. Y., the State Register, a newspaper of Springfield, Ill., the American Tribune, a newspaper of Dubuque, Iowa, appear, among other representations and statements, the following:

It is not claimed that this system will cure every case of reducible rupture, but reports are coming continuously of such cases.

Respondent has also followed the practice of distributing among purchasers and prospective purchasers, booklets containing alleged communications from rupture sufferers to the effect that the individuals to whom they are attributed have been cured of rupture by use of the appliance or appliances of respondent.

In his representations, whether by booklets or other forms of advertising, there is no differentiation by respondent between ruptures among the young and ruptures among the old. On the contrary, his representations clearly signify or imply that the use of his appliances will enable sufferers from hernia, of any age, to support and cure their reducible ruptures. This is evidenced by his use of communications purporting to have been subscribed by individuals of all ages containing representations of cures effected. Several of such communications relate to instances of rupture among infants or children, but generally they embrace instances of rupture among adults whose ages range from early maturity to extreme old age. One instance is reported by respondent to purchasers and prospective purchasers of his appliances, of a man 75 years old who had been ruptured for 38 years, but was cured by use of respondent's appliance, and thereafter worked as a laborer without any appliance. He reported another instance of a man ruptured for years, but who, having used his appliance, engaged in wrestling, boxing, and other forms of athletics without fear of harm. Respondent has gone so far as to represent cures of ruptures of long standing in men as old as 83 years, and in one instance, he represented a man at the age of 77 years suffering from a rupture measuring seven inches around had been cured in three months by use of the Magic Dot Outfit.

In truth and in fact the appliance or appliances, device or devices of respondent described or designated as Magic Dot, or Magic Dot Outfit, or Airtex-Magic Dot Combination, or New Science System are neither a development of science nor approved by science and are neither a discovery nor invention adapted to, or useful for the treatment of hernia or ruptures, in any of its advanced or serious stages.

His Magic Dot, or Magic Dot Outfit, or Airtex-Magic Dot Combination or New Science System, is inadequate, insufficient, and useless either for curative or palliative purposes except in less than 5 per cent of the cases of rupture. Rupture in children may be cured in the majority of cases by use of the appliance of respondent, and in an extremely limited degree there are moderate cases of rupture in adults which his appliance, or appliances may hold in place, and thereby a cure may, in some instances, be effected. Ninety-five per cent of the cases of rupture are incurable by means of the appliances of respondent, nor can it support the hernial sac in its proper place in 95 per cent of the cases of rupture.

It is the consensus of opinion, among the great body of competent men in the medical and surgical profession and other scientific professions concerned in the treatment and care of the human body who have had experience in, or engaged in, research or experimentation in

connection with hernia or rupture, that the use of the so-called truss described by respondent as "old-fashioned and cruel" is the correct palliative treatment which, in cases of reducible hernia or rupture may, in some instances, become a curative agent by which permanent relief is effected, depending upon the youth of the sufferer or the resistance or tendency with which the protrusion, tumor, or hernia, after having been returned to the abdominal cavity, is retained therein.

The truss is now, and for a long period of time has been recognized as the appropriate agency for the palliative treatment of hernia or rupture, and in cases of children and of adults with moderate hernias, as a curative agency. There are now, and have been competitors of respondent offering for sale and selling trusses in interstate commerce, and they have been for a long period of time, and now are, prescribed by physicians and surgeons generally, and offered for sale and sold as a part of the regular stock of the ordinary drug and surgical supply stores throughout the United States. They are neither old-fashioned, barbarous, torturous, cruel, unclean, obsolete, nor unscientific. They represent, and long have represented the scientific view for the palliative treatment of hernia or rupture.

While respondent does not claim that his appliances can either cure or support irreducible or strangulated hernia or rupture, reducible hernia or rupture may become irreducible at any moment, and thereupon palliative treatment with a truss must be succeeded by radical treatment or surgical operation in order to accomplish permanent relief safely or at all. Any hernia may become strangulated, and there is constant danger of it. Such hernia is extremely dangerous and usually results fatally unless there is immediate surgical operation. It is a very definite condition. If an appliance is used which does not exert the proper pressure at the critical point, there is always a danger that the hernia will come down and result in strangulation.

There are various diseases which simulate and may be mistaken for hernia such as hydrocele, lipoma, adenitis and varicocele. As a rule, strangulation occurs in patients whose hernias are down, or have been controlled by trusses. Sometimes the patient leaves off his truss from neglect or from a belief that he is cured, but strangulation is most often caused by the hernia slipping by the truss. It is necessary, therefore, for a truss or other appliance to be fitted to the individual sufferer from hernia or rupture by a competent person familiar with the mechanics involved in the palliative treatment of hernia, and also able to distinguish between hernia and other conditions which simulate it.

The respondent requires prospective patients or purchasers to furnish certain information in the orders, and thereupon he causes an appliance to be transmitted to the patient or sufferer with a little booklet containing directions for its use. There is no individual examination of the patient or sufferer. The measurements around the body on line with the rupture or ruptures are given in the order, the size of the rupture when out is stated, and compared with that of a marble, a walnut, a golf ball, or a hen's egg, for the information of respondent. The height, weight, age, and occupation of the sufferer or patient are supplied; also the age of the rupture, and information whether or not trusses have been worn, and if so, the particular truss then being worn. This is the only information respondent is furnished prior to the transmission of his appliance or appliances in pursuance of orders received. The physical condition of the individual is unknown to respondent. There is no suggestion in his literature that the sufferer or patient obtain the diagnosis of a competent physician or the service of a truss fitter. The whole trend of respondent's advertising and of his communications to individuals answering his advertisements is the encouragement of the individual to diagnose his own case and fit himself without the assistance of a physician, surgeon, or anyone else.

The order, when received, is considered by an assistant of respondent who has had experience in the fitting of trusses, but who is neither a physician nor surgeon, and who claims no other knowledge of, or familiarity with hernia or rupture than such as has been derived from his experience in fitting trusses. It is a necessary result of this practice that an individual who follows the suggestions of respondent, orders, receives, and applies to his body the appliances of respondent, without any accurate or reliable knowledge of his real condition. There may be no hernia or rupture. The condition the individual attributes to hernia or rupture may be the result of other diseases, in connection with, or treatment of which, the appliances of respondent or any form of trusses are useless, injurious and, possibly, dangerous. Generally, where there has been a diagnosis by a competent physician, or an examination of the individual by a truss fitter acquainted with the particular condition resulting from hernia or rupture and therefore able, to some extent at least, to differentiate between hernia or rupture and other diseases, and where the individual has been instructed how to reduce the rupture or hernia and has successfully reduced it, he is able to determine for himself whether or not the hernia or rupture is "down" or "up," and the particular point at, or on which pressure should be applied, in order to hold it in place when returned thereto. Even in such in-

stances it is unsafe for the individual to order a truss by mail and thereafter apply it to his own body without the supervision and assistance of someone experienced or skillful in the fitting of trusses.

It frequently happens that those actually suffering from hernia or rupture who have been using trusses are unable to determine for themselves whether or not their hernia or rupture has been completely returned into the abdominal cavity where it belongs. It has frequently happened that individuals suffering with hernia or rupture wearing the appliances of respondent have purchased other trusses in ignorance of the fact that the appliances of respondent were not holding up their rupture or hernia, but that it was "down" and out, with the appliance of respondent resting on top of it.

There are instances of a hernia or rupture which is partly reducible and partly irreducible, and contrary to the directions of respondent in his booklet distributed among purchasers and prospective purchasers which accompanies his appliance when transmitted in pursuance of orders, the patients or sufferers are frequently unable to return a part of the hernia because of a condition usually due to some adhesions between the contents of the hernial sac and the sac itself. These adhesions may result from an ill-fitting truss, and therefore the fitting of the individual to himself of respondent's appliance or appliances secured through the mail enhances the possibility of such adhesions and of a condition in which the hernia or rupture is partially irreducible. When such a situation arises and it may arise without the sufferer from hernia or rupture knowing it, the attention or service of a physician is immediately needed. If the sufferer is mistaken in believing that his hernia or rupture has been entirely reduced or has entirely gone back, when in fact it is only partially reduced, the application or use of a truss may prove serious, resulting in damage to the gut that is down in the sac and unreduced, and inflammation, or even strangulation. Every patient or individual whose hernia or rupture the appliance of respondent is insufficient to support or hold up, and these are 95 per cent of hernia or rupture cases, has been, and is in constant danger of irreducible or strangulated hernia or rupture.

Strangulated hernia, which is a constant menace to sufferers from hernia or rupture, and which, when present, demands immediate, radical treatment, occurs more frequently among those who have worn trusses than among those who have never worn them. Removal of the control of the hernia or rupture by a truss and substitution of the appliance of respondent enhances the danger of strangulation. Respondent has sold 100,000 of his appliances to sufferers or supposed sufferers from hernia or rupture, and less than 5 per cent of

such appliances, aside from those used on children or infants, have been able to support the hernia or rupture which they were sold to support, or to bring about a cure. Ninety-five per cent of them have been either useless or a source of injury or damage. Eight per cent of the men and 2 per cent of the women have suffered from hernia or rupture during some period of their lives and there is interest of substantial and far-reaching character in the protection of such a numerous portion of the public from the false and misleading representations of respondent and the injury and dangers that may result therefrom. There is interest of a substantial and far-reaching character in the protection of competitors of respondent who have been and are manufacturing and selling in interstate commerce, trusses for the treatment of hernia, a method of treatment which has long been recognized, and is now recognized as the most effective palliative treatment of hernia or rupture, as hereinbefore stated.

PAR. 3. The above and foregoing representations and statements of respondent, which have been and are used by him in order to induce the purchase of his appliances, have had and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that trusses or other appliances than those offered for sale and sold by respondent, are old-fashioned, barbarous, cruel, unclean, inefficient, unscientific, obsolete, and that the appliances of respondent can, and will, support every reducible hernia or rupture, and will effectuate, generally, cures of hernia or rupture, and to induce the purchase of respondent's appliance or appliances in reliance on such erroneous belief.

The above and foregoing representations of respondent have had, and have the capacity and tendency to harass, embarrass, and discredit competitors offering for sale or selling trusses actually recognized by science and the medical and surgical profession as the correct, palliative treatment of hernia or rupture, and to divert trade from them to respondent and otherwise to injure them because of his false, misleading, slanderous, and disparaging representations and statements concerning their products.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors, are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

15 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and evidence, briefs and arguments of counsel for the Commission and of counsel for respondent, and the Commission having filed its report stating its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, for other purposes":

It is now ordered, That respondent John G. Homan, trading under the firm name and style of New Science Institute, cease and desist directly and indirectly—

(1) From representing, in connection with offering for sale or selling in interstate commerce his appliance or device, that science has condemned trusses for the treatment of hernia as old-fashioned or barbarous, or torturous or unclean, or obsolete or because they prevent or retard the cure of hernia or rupture, and that his appliance or device is the latest invention, or development of science for treatment of hernia and has rescued ruptured men and women from the doom of rupture by trusses.

(2) From representing, in connection with offering for sale or selling in interstate commerce, his appliance or appliances, device or devices, variously designated, described, or called Magic Dot, Magic Dot Outfit, Airtex-Magic Dot Combination, or New Science System, that by use of them, or any or either of them, every reducible hernia or rupture, or reducible hernia or rupture in any considerable proportion of the cases, can or will be supported, or that by use of them or any or either of them, hernia or rupture can or will be cured generally, or in any considerable proportion of the cases, or from using representations of similar import.

It is further ordered, That respondent, within 60 days from and after the service of this order, file a report in writing, setting forth in detail the manner and form of its compliance with the order.

Complaint

IN THE MATTER OF

THOMAS KNAPIK AND GEORGE W. ERICKSON, CO-
PARTNERS TRADING AS KNAPIK & ERICKSON

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

Docket 1750. Complaint, Jan. 24, 1930—Decision, Oct. 26, 1931

Where a firm engaged in selling leather to work glove manufacturers, designated as "Muleide" a nonleather fabric one side of which so closely resembled the genuine, mule, horse, or cattle "splits" or "leather glove splits" used by such manufacturers and formerly stamped "mule hide," as to make possible deception of a person with little or no knowledge of leather, when used in manufacture of such gloves, and employed said coined word or trade name and registered trade-mark in referring to said imitation leather or fabric in advertisements, letters, and invoices, and on tags supplied by it to glove manufacturers for attachment by them to each glove made in whole or in part therefrom;

With tendency and capacity to deceive ultimate purchasers of gloves and mittens so manufactured into believing that said articles were made in whole or in part from leather made from the skin or hides of mules, or other leather, and to induce them to purchase the same in such belief, and with result of thereby placing in the hands of retailer buyers of said gloves from aforesaid manufacturer's wholesale or jobber purchasers, the means of committing a fraud, and thereby creating a tendency unfairly to divert trade from and otherwise injure said firm's competitors in the sale of materials used for aforesaid purposes, and also manufacturers of workmen's gloves and mittens made of leather and other materials:

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

Mr. E. J. Hornibrook for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Thomas Knapik and George W. Erickson, partners engaged in the sale at wholesale of leather goods and specializing in the kind of leather used in workmen's gloves, and mittens, and also in the sale of a nonleather fabric finished so as to simulate leather, and with principal place of business in Chicago, with naming product

misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, designate aforesaid fabric sold to manufacturers of gloves and mittens as "Muleide", and supply their vendee manufacturers with paper stickers or tags containing the words "Muleide, Non-Slip Patents Pending", to be attached by the latter to the mittens, gloves or other articles made from said product, and aforesaid vendee-manufacturers, as alleged, "sell such gloves, mittens, or other articles manufactured from said product, Muleide, to wholesalers or jobbers, who, in turn, sell the same to retail dealers in various States of the United States, and the said retailers, in turn, resell said articles to the consuming public," with the sticker or tag above described, attached to the gloves, mittens or other articles and plainly discernible.

Respondents' use of such stickers or tags "and their subsequent use by manufacturers, jobbers, wholesalers, and retailers," as above set forth, "have the tendency and capacity to deceive ultimate purchasers of gloves, mittens, and other articles made from such Muleide into the belief that they are made, in whole or in part, from the skin or hide of a mule, or from other leather, and to cause them to purchase the same in such belief, and the respondents, in the manner and form," as above described, "have thereby placed in the hands of said retailers the means of committing a fraud, and have thereby created a tendency unfairly to divert trade from, and otherwise injure" competitors, among whom there are many who sell real leather to manufacturers of workmen's gloves, mittens, and other articles, and among whom there are others who sell to their customers fabrics finished in simulation of and with the appearance of leather, for use in the manufacture of aforesaid products, without in anywise representing said fabric as composed of leather, either in whole or in part, all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances and filed their answers herein, hearings were had and evidence was thereupon intro-

duced before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission having filed a brief herein, and respondents having filed no brief, and respondents having failed to appear at the time and place set for oral argument and having notified the Commission by letter that they declined to appear, this matter was submitted on the record without argument and the Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Thomas Knapik and George W. Erickson, are copartners trading under the name and style of Knapik & Erickson in and from the City of Chicago, State of Illinois. For more than 16 years last past they have been engaged as such copartners, principally in the business of wholesaling leather suitable for making workmen's gloves to manufacturers of gloves located in the several States of the United States.

Since the latter part of the year 1928, and up until about the 1st of January, 1930, in addition to the business described above, respondents have been engaged in the wholesaling of an imitation leather under the name of Muleide, which imitation leather is used by their said customers in manufacturing workmen's gloves. Muleide is a term coined by respondents and copyrighted by them, and has been used by them as a trade name to designate the said imitation leather in the manner hereinafter shown. Respondents have caused quantities of Muleide to be transported, when so sold, to the respective purchasers thereof from their said place of business in the City of Chicago, in the State of Illinois, through and into various other States of the United States to the various places of business of such respective purchasers, and in the course and conduct of such shipments and sales of said Muleide, have been and are now in active competition with various persons and corporations, and other partnerships engaged in the sale of materials used in the manufacture of workmen's gloves in commerce among the several States of the United States.

PAR. 2. Muleide is made by the Foster Oil Fabrics Co. of Philadelphia, Pa., and is made of canton flannel cloth which is treated with undrying oil and colored and treated in such a manner as to cause one side of such fabric to resemble in appearance a certain grade or tannage of leather used in the manufacture of workmen's

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gloves. Respondents coined the word "Muleide," which word they used to describe such fabric and they caused such coined word to be registered in the United States Patent Office as a trade-mark. After such registration, respondents had tags printed and furnished quantities of such tags to manufacturers of gloves to whom they sold the material described as Muleide, and it was the purpose and instructions of respondents that one of such tags be attached by the manufacturers to each glove made in whole or in part from such material, which tags had printed thereon the words:

MULEIDE
Trade-Mark
Non-Slip
Patent Pending

Respondents circulated among their customers and prospective customers desk pads with calendars for the year 1930 attached, which had printed thereon the words "Treated Muleide Cloth, a Bear for Wear. No Slip Grip." They also had a rubber stamp with which they stamped the word "Muleide" upon samples of the material described in paragraph 2 hereof, which were sent by them to the said customers and prospective customers and prior to October, 1929, letters were written by respondents to their said customers and prospective customers and invoices made to their said customers in which letters and invoices such material was described as Muleide.

PAR. 3. Respondents purchased from said Foster Oil Fabrics Co. about 3,000 yards of the material Muleide and have resold about 2,000 yards of such material to manufacturers of gloves outside of the State of Illinois. Only the palm part of a glove is made of Muleide. The palm parts of 1,500 dozen pairs of gloves could be made from 2,000 yards of such material. Some of the material Muleide has been used by respondents' customers in the making of workmen's gloves and such gloves sold at retail. This material was distributed in rolls, each containing about 50 yards and was 42 inches wide and cost respondents 44 cents per yard, or approximately 4 cents per square foot, and in 1929 the grade of leather which this material resembles in appearance and which was used in the manufacture of workmen's gloves cost approximately 10 cents per square foot.

PAR. 4. The leather usually used in the making of workmen's gloves is produced from the hides of mules, horses, and cattle and is split from the upper part of the hide. This leather is known in the leather industry as "splits" and "leather glove splits." Years ago, when manufacturers made gloves out of "splits" they used to stamp it with the term "Mule Hide." Commission's Exhibit 11 is a sample

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of respondents' Muleide and Respondents' Exhibit 1 is a sample of Splits leather. Respondents' Muleide resembles Splits leather, and when used in the manufacture of workmen's gloves may be mistaken therefor by a person having little or no knowledge of leather.

PAR. 5. The aforesaid manufacturers sell such gloves, mittens, and other articles manufactured from said product Muleide to wholesalers or jobbers who, in turn, resell said articles to retailers who sell the same to the consuming public, with the sticker or tag described in paragraph 2, attached thereto and plainly discernible.

PAR. 6. Respondents' use of the term "Muleide" and its subsequent use by manufacturers, jobbers, wholesalers, and retailers, as described in the preceding paragraphs hereof, had and has the tendency and capacity to deceive ultimate purchasers of gloves and mittens made in whole or in part of such Muleide into the belief that they are made in whole or in part from leather made of the skins or hides of mules, and from other leather, and to cause them to purchase the same in such belief, and the respondents, in the manner and form as described in the preceding paragraphs hereof have thereby placed in the hands of said retailers the means of committing a fraud and have thereby created a tendency unfairly to divert trade from and otherwise injure said competitors and manufacturers of workmen's gloves and mittens made of leather and other materials.

CONCLUSION

The above alleged acts and practices of respondents are all to the prejudice of the public, and of respondents' competitors, and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondents, the testimony taken and the record herein, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That respondents, Thomas Knapik and George W. Erickson, copartners trading as Knapik & Erickson, cease and

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desist from using the name or term "Muleide" or any other word, term, or phrase of like import in connection with the advertising, sale, or offering for sale, in commerce among the several States of the United States or within the District of Columbia, of a product not made of leather.

It is further ordered, That the respondents, Thomas Knapik and George W. Erickson, shall within 60 days after the service upon them of a copy of this order to cease and desist, 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 hereinbefore set forth.

Syllabus

IN THE MATTER OF
FIDELITY HOP & MALT CORPORATION AND WANDER
COMPANY

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

Docket 1936. Complaint, Apr. 7, 1931—Decision, Nov. 10, 1931

Where a corporation engaged in the sale and distribution of malt sirups,

- (a) Sold a sirup flavored wholly with domestic hops in containers labeled, at its request, with such words as "Genuine Saazer Malt," "Famous Saazer Malt Sirup," "Original Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup"; and,
- (b) Made such statements in advertising its aforesaid product in English and foreign language newspapers circulating in the United States, and in trade journals and publications having wide circulation, as "This Old World flavor meets the New World's favor," together with the words "Famous Saazer Malt Sirup," conspicuously, and, in small letters, the words "Bohemian Style";

With the capacity and tendency to mislead and deceive the purchasing public into believing the aforesaid product to have been imported into the United States from the Saazer district of Bohemia or Czechoslovakia, or to contain or be flavored with the genuine, well and favorably known Saazer hops there grown and with the effect of thereby placing in the hands of dealers means enabling them to mislead the purchasing public into aforesaid erroneous belief; and,

Where the manufacturing vendor of the aforesaid malt sirup,

- (c) Supplied to its aforesaid vendee distributor, at the latter's request, cans and containers for the sale of said product bearing such labels as above set forth; with the result of aiding, assisting and promoting said vendor distributor in the sale of its said malt sirup, through furnishing it with the means of putting into the hands of latter's wholesale and retail dealers the means of selling the product in question as and for a malt sirup made or produced in the former Saazer district of Czechoslovakia, and imported into the United States therefrom, or as and for a product made in the United States containing hops grown or produced in said district, or flavored therewith;

With the capacity and tendency to divert trade to said vendor distributor from competitors offering and selling in interstate commerce malt sirup imported to the United States from said district, or made in the United States in whole or in part from imported hops or other imported ingredients, or from domestic ingredients or materials:

Held, That such practices under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

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Mr. James M. Brinson for the Commission.

Rosenthal, Hamill & Wormser, of Chicago, Ill., for Fidelity Hop & Malt Corporation and *Donnelly, Lynch, Anderson & Lynch*, of Cedar Rapids, Iowa, for Wander Co.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Fidelity Hop & Malt Corporation, an Illinois corporation, engaged in sale and distribution of malt sirup, and respondent Wander Co., a Delaware corporation, engaged in manufacture and sale of said product, both with principal place of business in Chicago, with misbranding or mislabeling, and advertising falsely or misleadingly as to source or origin and composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, Fidelity Hop & Malt Corporation, as charged, sells malt sirups made by respondent Wander Co., in cans or containers, (1) to the body of which said Wander Co. has affixed labels supplied by respondent, Fidelity Hop Corporation containing such words as "Saazer Malt Sirup," "Original Saazar Malt Sirup," "Genuine Saazar Malt," "Famous Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup," together with a large depiction of a rural scene, particularly featuring growing hops and laborers and a girl attired in foreign costume, and (2) with tops supplied by respondent, Fidelity Hop Corporation, bearing the words "Genuine Saazer Malt Sirup" or "Famous Saazer Malt Sirup," together with a depiction of a girl attired as aforesaid, and respondent Fidelity Hop & Malt Corporation, further, as charged, in advertising products dealt in by it as aforesaid, in foreign language and English newspapers and particularly in trade journals and publications has featured such words as "This Old World flavor meets the New World's favor," and "Famous Saazar Malt Sirup," together with words, in small letters, "Bohemian style," and statement "Plain with genuine imported Saazer hops or hop flavored"; notwithstanding fact that product in question was not imported from Saazer District of Bohemia nor flavored with hops or other ingredients there produced, as implied through use of said words, but was a domestic product made solely of domestic ingredients.²

² Allegations of complaint relating to growing of genuine Saazer hops, and meaning which has come to be attached to word "Saazer" follow:

"Saaz is a town in the country formerly known as Bohemia, which is now a province of Czechoslovakia. It is located in the midst of the hop-growing industry. Hops pro-

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Aforesaid acts and practices of respondent, Fidelity Hop & Malt Corporation "have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the malt sirup offered for sale and sold by it has been or is imported into the United States," from the aforesaid district, or has been or is made from hops or other materials there grown, and to induce the purchase of said malt sirup in reliance upon such erroneous belief, and acts and practices of respondent Wander Co., as aforesaid, "have aided, assisted, and promoted the sale and distribution in interstate commerce by respondent Fidelity Hop & Malt Corporation, of its malt sirup, by furnishing said respondent Fidelity Hop & Malt Corporation with the means to put into the hands of, and which means said respondent has put into the hands of, dealers, wholesale and retail, for the sale of such malt sirup" as and for malt sirup made in aforesaid district and imported therefrom, or made in the United States from hops or other materials there grown, and acts and practices of respondents have further capacity and tendency to divert trade to respondent Fidelity Hop & Malt Corporation from competitors offering and selling, in interstate commerce, truthfully described or designated malt sirup products, imported into the United States from Bohemia, or other countries, or made in the United States in whole or in part of hops or other ingredients from the aforesaid Saazer district, or products made in the United States from domestic ingredients or materials; all to the prejudice of competitors and the purchasing public, and in violation of the provisions of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon

duced in such section, known as the Saazer district, have been for a long period of time and now are generally known, designated and described as Saazer hops, and have been and now are well and favorably known throughout the United States. They have been for a long period of time, and now are extensively imported into the United States, and offered for sale and sold as Saazer hops, and malt extract, malt sirup and other products manufactured in the Saazer district from, or out of material or ingredients produced in such district have been for many years, and now are, imported into the United States and designated and described by or with the word 'Saazer,' or as flavored with Saazer hops. Such name or word 'Saazer' has come to signify or mean, and for many years last past has been understood by the purchasing public to signify and mean, and now signifies and means when applied to hops or malt products, that they have been produced or manufactured in the Saazer district of Czechoslovakia and imported into the United States, or that they consist in whole or in substantial part of ingredients produced in said district and imported into the United States therefrom."

Fidelity Hop & Malt Corporation and Wander Co., hereinafter called respondents, charging them and each of them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondents having entered their appearance and filed their answers, testimony and documentary evidence were received in the course of a hearing at Chicago, Ill., September 9, 1931, before John W. Bennett, an examiner of the Federal Trade Commission, theretofore duly appointed for such purpose, and the respondents, and each of them, in the course of such hearing, having duly consented in the record to the issuance of an order by the Commission requiring them and each of them to cease and desist from the practices charged in the complaint, and thereafter the proceeding having come on regularly for final decision on the complaint, testimony, evidence and agreement of respondents to accept such order, and the Commission having duly considered the same, now makes this its report in writing, stating its findings as to the facts and its conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Fidelity Hop & Malt Corporation is, and for more than a year last past, has been, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Chicago in the State of Illinois, and has been for such period of time and now is, engaged in the sale and distribution in commerce, among and between the various States of the United States, of a malt sirup which it has sold and sells to grocers, including chain-store grocery operators, and when sold, respondent has caused and causes such product to be transported from its said place of business to purchasers at their various points of location in the other States of the United States than the State of Illinois.

Respondent Fidelity Hop & Malt Corporation has been during such period of time, and now is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of malt sirup products in interstate commerce.

PAR. 2. Respondent Wander Co. is now, and for several years last past, has been a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business and manufacturing plant in the city of Chicago in the State of Illinois. It has manufactured, and now manufactures, among other products, a malt sirup which it has sold and sells to various distributors of malt sirup and other malt products located

in the city of Chicago in the State of Illinois, including respondent Fidelity Hop & Malt Corporation, with the knowledge and expectation that such products have been, are, and will be, offered for sale and sold by respondent Fidelity Hop & Malt Corporation, and such other distributors in interstate commerce, and have been, are, and will be transported from the place of business of respondent Fidelity Hop & Malt Corporation in the city of Chicago in the State of Illinois to purchasers in the various other States of the United States.

PAR. 3. It has been, and is the practice of respondent Fidelity Hop & Malt Corporation to purchase the said malt product it offers for sale and sells in the course and conduct of its said business from respondent Wander Co., and it has been, and is the practice of said respondent Wander Co. to deliver such product to respondent Fidelity Hop & Malt Corporation for resale, ready for delivery to purchasers in the various States of the United States; except that it has been, and is the practice of respondent Fidelity Hop & Malt Corporation to offer for sale and sell two types or classes of malt sirup, to wit, one plain malt sirup unflavored with hops, and the other a malt sirup flavored with domestic hops. Eighty per cent of the sales of respondent Fidelity Hop & Malt Corporation consist of sales of the plain and unflavored malt sirup. The type of malt sirup flavored with hops has been at all times heretofore and now is flavored wholly with domestic hops. In that portion of its sales covering plain or unflavored malt sirup, it has been the practice of respondent to sell in connection therewith, packages containing hops.

The product of respondent flavored with hops has usually borne on labels affixed to containers the words "hop flavor," and the respondent Wander Co. has furnished and furnishes the cans or containers in which its product is sold to respondent Fidelity Hop & Malt Corporation and delivered to it except the lead tops or closure members of such cans or containers which have been, and are furnished by respondent Fidelity Hop & Malt Corporation, and which respondent Wander Co. attaches to such cans or containers at the request of the respondent Fidelity Hop & Malt Corporation.

There have been affixed to such cans and containers by respondent Wander Co., labels furnished by respondent Fidelity Hop & Malt Corporation, on which labels have appeared either the words "Genuine Saazer Malt," or "Famous Saazer Malt Sirup," or "Original Saazer Malt Sirup," and labels appearing on the body of the can or containers have borne either the words "Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup," and respondent Fidelity Hop & Malt Corporation has offered for sale and sold in the course of its business in such commerce its malt products in cans or containers bearing such labels.

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Respondent Fidelity Hop & Malt Corporation has also caused its malt sirup product to be advertised in newspapers, circulated in the United States both in foreign languages and in the English language, particularly in trade journals or publications such as Malt Age, having a wide circulation in the various States of the United States, and in such advertisements respondent Fidelity Hop & Malt Corporation has used the word "Saazer" to designate and describe its product, and in connection therewith has used such language as the following, in large and conspicuous letters:

This Old World Flavor Meets The New World's Favor
with the words immediately below, in large capital letters
FAMOUS SAAZER MALT SIRUP
below which appear in small letters the words
Bohemian Style

PAR. 4. There is a district in the country formerly known as Bohemia which is now a province of Czechoslovakia, which was formerly known and described as the Saazer district. Hops produced in such district have been for a long period of time, and now are, generally known, designated, and described as Saazer hops, and have been, and now are, well and favorably known throughout the United States. The word "Saazer" when applied to hops has come to signify and mean, and for many years last past has been understood by the purchasing public to signify and mean, and now signifies and means, hops produced in such district formerly known as the Saazer district in Bohemia now Czechoslovakia.

PAR. 5. The acts and practices of respondent Fidelity Hop & Malt Corporation in offering for sale and selling a product manufactured in the United States entirely from domestic ingredients as "Saazer Malt Sirup" or "Original Saazer Malt Sirup" or "Genuine Saazer Malt Sirup" or "Famous Saazer Malt Sirup" or "Saazer German Style Malt Sirup," have had and have the capacity and tendency to mislead and deceive the purchasing public into the belief that such product has either been imported into the United States from the district formerly called Saazer in Czechoslovakia, or that it contains, or is flavored with hops grown in such district, and they have put into the hands of dealers the means by which they have been enabled to mislead and deceive the purchasing public into such erroneous belief.

The acts and practices of respondent Wander Co., as described in paragraphs 2 and 3 hereof, have aided, assisted, and promoted the sale and distribution in interstate commerce by respondent Fidelity Hop & Malt Corporation, of its malt sirup by furnishing said respondent Fidelity Hop & Malt Corporation with the means to

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put into the hands of, and which means said respondent has put into the hands of, dealers, wholesale and retail, for the sale of such malt sirup as and for malt sirup manufactured or produced in the district of Czechoslovakia formerly called Saazer and imported into the United States therefrom, or as and for malt sirup manufactured in the United States containing or flavored with hops grown or produced in such Saazer district.

The aforesaid acts and practices of respondents Fidelity Hop & Malt Corporation and Wander Co. have had, and have the capacity and tendency to divert trade to respondent Fidelity Hop & Malt Corporation from competitors offering for sale and selling in interstate commerce malt sirups imported into the United States from the Saazer district, or malt sirup products manufactured in the United States in whole or in part from, or out of, hops or other ingredients imported into the United States, or malt products manufactured in the United States from domestic ingredients or material.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and evidence, and an agreement by respondents to accept an order of the Commission to cease and desist from practices charged in the complaint, and the Commission having filed its report, stated its findings as to the facts and its conclusion that respondents have, and each of them has, violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes,"

It is now ordered, That respondent Fidelity Hop & Malt Corporation cease and desist from using the word "Saazer" as a trade name for, or as a part of, such trade name, or in connection therewith, or to describe or designate, any product offered for sale or sold in interstate commerce manufactured from or out of domestic

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ingredients, and respondent Wander Co. from assisting and promoting such use of the word "Saazer" by affixing to cans or containers of such products, labels containing such trade name, description or designation, unless the word "Saazer" is accompanied by apt and adequate words equally as conspicuous as the word "Saazer," clearly showing that the product so labeled, designated, or described is manufactured in the United States from domestic ingredients.

And it is further ordered, That respondents, and each of them, file within 60 days from and after the service of this order a report in writing setting forth in detail the manner and form of their compliance with its terms and provisions.

Syllabus

IN THE MATTER OF

WHIRLWIND CARBURETOR CO., ALSO TRADING AS WHIRLWIND MANUFACTURING CO., ELLING O. WEEKS, INDIVIDUALLY AND AS PRESIDENT AND TREASURER OF WHIRLWIND CARBURETOR CO., AND P. C. SORENSON, INDIVIDUALLY AND AS SECRETARY OF WHIRLWIND MANUFACTURING CO.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1931. Complaint, Mar. 27, 1931¹—Decision, Nov. 12, 1931

Where a corporation engaged in the manufacture of a so-called "Whirlwind Vaporizer" for automotive use, and in the manufacture, and sale thereof, by mail and through agents; and two individuals, organizers, and president and treasurer, and secretary, thereof; in conducting the business in question through circular letters, leaflets, newspapers, and magazine advertisements,

- (a) Made such statements as "450 miles on a gallon of gas," in large display type, with explanatory matter in much smaller type, to effect that, as claimed, a gallon of gas contained sufficient energy, converted 100 per cent, to run a 4-cylinder car such distance, and that device in question, a "new gas saving invention," which "astonishes car owners," was producing mileage tests "that seem unbelievable," as well as creating more power, giving instant starting, quick pick-up and eliminating carbon; and
- (b) Made such statements as "Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! * * * imagine more than 50 miles to the gallon. That is what the Whirlwind * * * does * * * Enough of a saving on just one trip to more than pay for the Whirlwind. * * * Saves motorists millions of dollars yearly. Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors * * *," "From nature the Whirlwind secures a scientific principle and with it develops amazing power from ordinary gasoline," "works on an entirely new principle utilizing a portion of the 95 per cent (wasted energy in gasoline)," "vaporizes waste gas," "found by actual tests to increase gasoline mileage from 25 per cent to 50 per cent," "60 miles on a gallon," "smoother running motor," "bus driver saves 50 per cent," "more power in mileage," "cuts gas costs one-third," "starts motor instantly," "power on hills," "four runs like a six," "quick get-away," "more pep and speed," and others of similar tenor, and "salesmen make \$100 a week and over";

Facts being that no way had been found to bring about such conversion as aforesaid referred to, said statement was likely to prove very deceptive to casual reader perusing only the large type, and statements as to mileage were based upon letters received and accepted without corroboration, and that while device might bring about improvement in some respects at expense of general engine performance, it brought about very little improvement in general engine performance, and no such increase as from 25 to 50 per

¹ Amended as to the names only.

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cent in mileage from a given quantity of gasoline, did not prevent accumulation of carbon, could not correct any vaporization evils with manifold and induction system ordinarily used in automobile engines, did not add to speed, power, smoothness, or economy of operation of any automobile motor to anything like extent claimed, and various representations, statements, and claims made were not supported by scientific tests and measurements, and were grossly exaggerated, false and misleading;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of device in question, and a tendency unfairly to divert trade from competitors to it:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent corporation, engaged in the manufacture and sale of its so-called Whirlwind Vaporizer, for attachment between carburetor and intake manifold of motor, and respondent individuals, officers of respondent corporation, all of Milwaukee, with advertising falsely or misleadingly, as to results and success of product and compensation or awards of agents, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, make numerous false and misleading representations in circular letters, leaflets, etc., as to the mileage accomplished through use of such device, increased speed and power, freedom from carbon, etc.,¹ and further set forth in their advertising that salesmen and distributors are "wanted to make up to \$100 weekly," facts being claims in question as to extravagant mileage, elimination of repair expenses, etc., are "grossly exaggerated, misleading and false, and are not supported by scientific tests or measurements by experts," and use of device, as directed, "does not add in any appreciable degree to the speed, power or smoothness" of the motor, nor save repair expenses, eliminate or reduce carbon, etc., and "respondents do not pay agents \$100 a week, but instead sell any person in lots of a certain number, the said device at a less price than \$4 each, for the purpose of resale at a

¹ Various representations or substantially all the various representations, quoted from the respondent's advertising and alleged in the complaint, are set forth *infra*, in the findings, at page 355.

profit, and if such person sells a sufficient number of said devices at such profit he earns that profit regardless of the time period or amount."

Said representations, statements, and claims above set forth are grossly exaggerated, misleading and false and have the "tendency, and operate to mislead and deceive purchasers and prospective purchasers of respondents' device into the erroneous belief that the purchase and use of said device in accordance with directions, will result in a great saving in gasoline expense and add to the speed and power of their automobiles; that it will save repair expense and eliminate, reduce, or clean out carbon deposits, and that it will increase smoothness of operation, and respondents' representations to prospective agents of \$100 a week is calculated, has a tendency, and operates to mislead and deceive prospective agents into the erroneous belief that respondents will pay wages or salary of \$100 a week"; all to the prejudice of the public, and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents Whirlwind Carburetor Co., a corporation, also trading as Whirlwind Manufacturing Co., Elling O. Weeks individually and as president and treasurer of Whirlwind Carburetor Co., and P. C. Sorenson, individually and as secretary of Whirlwind Manufacturing Co., charging them with the use of unfair methods of competition in violation of the provisions of said act.

Respondents filed their joint and several answers and the case was set down and testimony taken in due course before an examiner of the Commission. Respondents offered no testimony on their behalf and stipulated and agreed that the Commission might thereupon proceed to make its report, state its findings as to the facts, make its conclusion based thereon, and enter its order disposing of the proceeding without presentation of argument or filing of briefs.

Thereupon this proceeding came on for final hearing upon the complaint, answer and record of evidence, and the Commission having duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Elling O. Weeks and P. C. Sorenson caused to be organized and for five years last past have directed, managed and carried on the business of Whirlwind Carburetor Co., a corporation existing under the laws of the State of Wisconsin, with principal office and place of business in the city of Milwaukee, State of Wisconsin. Mr. Weeks is president and treasurer of said corporation and P. C. Sorenson is the secretary. One "E. Oliver" was named as respondent, but the evidence developed that this was merely an artificial name used sometimes in the corporate business by Mr. Weeks, whose middle name is Oliver. The said corporation sometimes carries on business also under the name and style of Whirlwind Manufacturing Co. The business in which respondents are, and for more than two years last past have been engaged, is the manufacture of and sale by mail and through agents of a certain mechanical device designated as Whirlwind Vaporizer for attachment between the carburetor and intake manifold of any automobile motor. On said device are four grooved depressions for the induction of air from four different directions into the mixture stream for the purpose of imparting a rotary motion thereto, with the purposes, as claimed by respondents, of increasing the mileage to be obtained with a given quantity of gasoline and generally to improve the performance of the motor to which such device is attached. Respondents, and each of them, cause such devices when sold to be transported to the respective purchasers thereof from Milwaukee in the State of Wisconsin through and into various other States in the United States and to foreign countries, and in the course and conduct of their said business they have been and are now in active competition with various persons, partnerships, and corporations also engaged in the manufacture and sale, or sale and distribution, in interstate commerce of other automotive devices and carburetor attachments designed for similar purposes.

PAR. 2. In the course and conduct of their business as aforesaid, by circular letters, leaflets, newspaper, and magazine advertising published and circulated throughout the United States, respondents represent and have represented that said device, when installed and used in accordance with instructions, adds to the speed and power and increases the smoothness of operation of the motor, saves repair expense, clears out carbon, and increases by 25 per cent or more the mileage to be obtained from a gallon of gasoline. Said advertising contains, among others, the following claims and statements:

Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! 559 miles over rough mountainous country burning only 11 gallons of gasoline. Imagine more than 50 miles to the gallon. That is what the Whirlwind carbureting device does for D. R. Gilbert, enough of a saving on just one trip to more than pay the cost of the Whirlwind. *The Whirlwind saves motorists millions of dollars yearly.* Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors. Salesmen and distributors wanted to make up to \$100 weekly.

450 miles on a gallon of gas. There is enough energy in a gallon of gasoline if converted 100 per cent mechanical energy to run a 4-cylinder car 450 miles. *New gas saving invention astonishes car owners.* * * * Has accomplished wonders in using a portion of this waste energy and is producing mileage tests that seem unbelievable. Not only does it save gasoline but it also creates more power, gives instant starting, quick pick-up and eliminates carbon. *Free sample and \$100 a week.* * * * Write to-day to E. Oliver, president.

From nature the Whirlwind secures a scientific principle and with it develops amazing power from ordinary gasoline.

105 miles on 3 gallons of gas in 1925 Ford.

48 miles on 1 gallon of gas, Chevrolet coupe.

30 miles per gallon with Whirlwind on Dodge.

Increase of 18 to 28 miles per gallon with Whirlwind.

Increase of 15 to 23 miles per gallon with Whirlwind.

25 to 50 per cent increase. The Whirlwind carbureting device is working on an entirely new principle utilizing a portion of the 95 per cent (wasted energy in gasoline), picking up the otherwise wasted particles of gasoline, whirling and churning them into a vaporized fuel that gives from 25 to 50 per cent increase in mileage, quicker pick-up, instant starting, smoother running, and reduces carbon formation.

Has been found by actual tests to increase gasoline mileage from 25 to 50 per cent.

Mileage gain of 48 per cent on 1926 Hudson.

60 miles on a gallon.

Smoother running motor.

Bus driver saves 50 per cent.

More power in mileage.

Cuts gas costs one-third.

Power on hills.

Starts motor instantly.

Doubled mileage.

Four runs like a six.

Quick get-away.

More pep and speed.

The power of Whirlwind stops waste—vaporizes waste gas—25 to 50 per cent saving in gas—price in U. S. A. and in Canada, complete, \$4.

PAR. 3. Respondents have made some recent revisions in the advertisements and advertising matter used by it, but the most noticeable change so made was to change the statement of the amount of money agents selling the device might make. The original claim was that such agents made \$100 a week and over, and as changed, the

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claim reads, Up to \$100 a week. All advertisements which contained statements of mileage obtained by users of the device were based upon letters received from such users. The originals of two such letters were put in evidence. Respondent has never undertaken to verify any of the statements contained in such letters, but has accepted such statements as true without any corroboration.

The device described in paragraph 1 hereof was invented by the respondent, Elling O. Weeks, and application has been made to have such device patented. The inventor testified at length herein concerning his conception of the functions of the device, what it might accomplish, and the manner in which it produced the results claimed for it. Respondent distributes productions of such device through agents, who buy such devices outright from respondent and resell same direct to users of automobiles. In all about 2,000,000 of such devices have been so sold. Sales are made on an agreement to refund the purchase price if the purchaser finds the device to be unsatisfactory within 30 days. Refunds have been made under this agreement to about 7 per cent of the purchasers.

Testimony was given by three witnesses who had operated automobiles with respondent's device attached. One testified that the mileage obtained with 1 gallon of gasoline, with the automobile used by him, without the device was 10 to 12 miles, and with the device attached, 12 or 13 miles or more, and that the use of the device otherwise increased the efficiency of the engine. Another testified that with the device attached to the car operated by him he obtained an average mileage of 18.75 miles per gallon of gasoline, and without the device an average of 17.1 miles, but stated that he was unable to detect any improvement in the smoothness with which the engine performed when the device was attached. Another testified that the mileage obtained by him with an automobile to which the device was attached was increased from 16 miles to 18 miles, and that the speed, pick-up, and smoothness of operation was increased by the use of the device and the accumulation of carbon was lessened. David Levine, of Cleveland, Ohio, testified that in the summer of 1930 he obtained two of the devices from the respondent and after a practical test found that the use of such devices resulted in decreased power, mileage, and pick-up of the automobiles to which they were attached, and that such devices were returned to respondent and the purchase price refunded.

In May, 1931, one of the respondent's devices was given to the U. S. Bureau of Standards for the purpose of having same tested. It was installed in a Ford Model I A engine on test blocks connected with an electric dynamometer in the laboratory of the bureau. The

installation was made in accordance with the printed instructions which accompanied the device. Test runs of the engine were made, both with and without the device, and comparisons were made as to the accumulation of carbon, and it was ascertained that while very little difference could be detected, there was a very slight increase of carbon when the device was attached. Other tests were made to ascertain maximum power and for economy in the way of a saving in gasoline consumption. The tests made showed that the power developed with the device attached was slightly less than that developed with the same engine under like conditions without the device and that the use of the device did not result in any saving in gasoline consumption. These differences in the results obtained both with and without the device were so small that they could be considered as being well within experimental error.

PAR. 4. The Commission finds that under certain conditions the device might appear to have some merit, but that generally, when attached to an automobile motor, it brings about very little improvement in the general performance of the engine and in no case results in an increase of from 25 to 50 per cent in the mileage from a given quantity of gasoline; that it does not prevent completely the accumulation of carbon; that with the manifold and induction system generally in use in automobile engines, it is impossible for respondent's device in itself, to correct any vaporization evils. That the theories advanced by respondents concerning the reasons for pick-up, quick starting, and that carbon results from the presence of unburned liquid fuel and oil in the combustion chamber are true; that if the re-mixing and turbulent action of the fuel mixture is accomplished by the device, as claimed, it will undoubtedly result in increased mileage, power, pick-up and quick starting, and to some extent lower the rate of carbon formation, but that the device will only help conditions when the engine is equipped with poorly designed carburetor, or by a chain of fortuitous circumstances; that it might bring about improvement in performance at some points, at the expense of the general engine performance.

The Commission finds that respondents' advertisements which are headed "450 miles on a gallon of gasoline" in large display type, while followed by an explanation in much smaller type to the effect that some person has made the claim that there is enough energy in 1 gallon of gasoline, if converted 100 per cent into mechanical energy, to run a 4-cylinder car 450 miles is likely to prove very deceptive if the casual reader should only read the lines printed in the large type and not take time to read the explanatory matter in smaller type.

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No way has been found to convert gasoline into 100 per cent mechanical energy.

The advertisement headed "Over the mountains from Los Angeles on 11 gallons of gas," is based upon a letter, the truth of the contents of which respondents made no effort to verify.

PAR. 5. The Commission finds that the representations, statements, and claims hereinabove set forth in paragraph 2 hereof are grossly exaggerated, false and misleading; they are not supported by scientific tests or measurements and the installation and use of the said device as directed does not add to the speed, power, or smoothness, or economy of operation of any automobile motor to anything like the extent claimed for it by respondents in their advertising above referred to.

PAR. 6. The foregoing statements, representations, and practices of respondent, and each of them have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of the aforesaid device and have a tendency unfairly to divert trade from competitors of respondents to respondents.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents thereto and the testimony taken in due course before an examiner of the Commission and respondents' exceptions, and respondents having waived the filing of briefs and oral argument and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Whirlwind Carburetor Co., a corporation also trading under the name and style "Whirlwind Manufacturing Co.," Elling O. Weeks, individually and as president and treasurer of the Whirlwind Carburetor Co., and P. C.

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Sorenson, individually and as secretary of the Whirlwind Carburetor Co., and each of them as well as their agents and employees, in soliciting the sale of and selling, and advertising their product in interstate commerce, and as a means of securing the services of salesmen or agents to purchase and sell or resell their product known as the Whirlwind Vaporizer, do cease and desist from making the following statements or representations:

1. Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! 559 miles over rough mountainous country burning only 11 gallons of gasoline. Imagine more than 50 miles to the gallon. That is what the Whirlwind carbureting device does.

2. *The Whirlwind saves motorists millions of dollars yearly.* Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors.

3. *450 miles on a gallon of gas,* unless the explanation to the effect that some person has claimed that there is enough energy in 1 gallon of gasoline if converted 100 per cent into mechanical energy to run a 4-cylinder car 450 miles is printed so as to be equally conspicuous.

4. Is producing mileage tests that seem unbelievable.

5. Eliminates carbon.

6. Salesmen make \$100 a week and over.

7. Develops amazing power from ordinary gasoline.

8. 105 miles on 3 gallons of gas in 1925 Ford.

9. 48 miles on 1 gallon of gas, Chevrolet.

10. 30 miles per gallon with Whirlwind on Dodge.

11. Increase of 18 to 28 miles per gallon with Whirlwind.

12. Increase of 15 to 23 miles per gallon with Whirlwind.

13. Gives from 25 to 50 per cent increase in mileage.

14. Has been found by actual tests to increase gasoline mileage from 25 to 50 per cent.

15. Mileage gain of 48 per cent on 1926 Hudson.

16. 60 miles on a gallon.

17. Bus driver saves 50 per cent.

18. Cuts gas costs one-third.

19. Doubled mileage.

20. Four runs like a Six.

21. *The power of Whirlwind stops waste*—vaporizes waste gas—25 to 50 per cent saving.

It is further ordered, That respondents aforesaid, in soliciting the sale of, selling, and advertising their said product in interstate commerce, do cease and desist from the use of all other like or similar statements and representations of untrue import or effect.

It is further ordered, That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

ALEXANDER-MARTIN COMPANY, A. H. MARTIN,
AND W. R. ALEXANDERCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1926. Complaint, Mar. 11, 1931—Order, Nov. 14, 1931*

Consent order requiring respondent corporation and respondent individuals to cease and desist from representing, in connection with sale of ready-made clothing dealt in by them, that same is tailor made or specially made to order; and from falsely representing that two suits are offered and sold at or for the price of one, that purchasers will have inspection privilege before paying balance due, when in fact shipments made C. O. D. without such privilege; and that full refund will be made in accordance with guarantee of fit and satisfaction; all as in said order set forth and qualified.

Mr. PGad P. Morehouse for the Commission.

Dilley & Dilley, of Grand Rapids, Mich., for respondents.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Alexander-Martin Co., and A. H. Martin and W. R. Alexander, individuals, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Alexander-Martin Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Grand Rapids in said State. It is engaged in the business of selling ready-made clothing direct to the public through agents or salesmen who canvass the public as hereinafter set forth. It causes its merchandise when thus sold to be transported from its principal place of business in the State of Michigan into and through other States of the United States to the purchasers thereof located in said other States of the United States. In the course and conduct of its said business respondent corporation is in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of men's clothing, both ready-made and custom-made, in

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interstate commerce between and among the various States of the United States.

PAR. 2. Respondent A. H. Martin is president and treasurer, and respondent W. R. Alexander is vice president and general manager, respectively, of said respondent corporation, and are now and have been during the existence of said corporation, and particularly during the past three years in active charge and management of the affairs thereof. Said individual respondents, Martin and Alexander, are the principal stockholders of the Martin Chain Stores Corporation and other chain-store organizations which operate a number of retail men's furnishings and clothing stores in the State of Michigan, and other neighboring States, with principal store and place of business located in the city of Grand Rapids in the State of Michigan. Said individual respondents, Martin and Alexander, are not engaged in the business of manufacturing or tailoring men's clothing, and the said retail stores which they own and control, purchase most of the men's clothing distributed by them from Max Udell & Sons, a clothing manufacturer located in the city of New York, State of New York.

PAR. 3. Respondent corporation, under the direction of individual respondents, in the sale and distribution of men's ready-made clothing direct to the public through agents or salesmen has adopted and used, and now uses, numerous and various trade names, some of which feature the word "woolen" or the word "wool"; the policy of said respondents being to abandon a trade name after the country has been canvassed under such trade name, and to adopt a new one without disclosing such fact to the public, and without disclosing the true ownership and control of the business conducted through said trade names.

PAR. 4. Respondent corporation under the direction and control of said individual respondents, in the course and conduct of its said business, employs numerous agents or salesmen throughout the several States to canvass the public, providing said agents or salesmen with a kit containing samples of fabric, price lists, style illustrations, order blanks containing instructions for taking measurements, and other advertising matter featuring respondent's business conducted under the respective trade names. Said agents or salesmen, with the acquiescence and permission of said respondents to enter into arrangements, agreements, or understandings with retail dealers, local tailors or other individuals suitably situated in the respective communities, where said agents or employees are canvassing, whereby said retail dealers, tailors or other individuals, hold special sales, featuring the clothing being distributed by respondents' said agents or salesmen,

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and cooperate with said retail dealers, tailors, or other individuals in said special sales by being present and taking part in the negotiations, and particularly by taking the measurements of customers or prospective customers and receiving cash deposits on all clothing sold, to which said agents or salesmen are entitled as their commissions in the transactions.

PAR. 5. Said respondent corporation under the direction of said individual respondents, in the course and conduct of its said business, hereinbefore described, has made and now makes numerous false and misleading statements and representations, in its printed advertising matter, or verbally through its said agents or salesmen, among which are the following:

(a) That the garments advertised or offered for sale through said respondents, agents, and salesmen are to be manufactured to the order of the purchasers or customers, from fabrics selected by said purchasers or customers and according to measurements taken by said agents or salesmen when in truth and in fact said garments were not and are not now made to order but were and are now supplied from the stock of retail stores owned or controlled by said individual respondents in the city of Grand Rapids, State of Michigan, and elsewhere.

(b) That the garments advertised or offered for sale through said respondents' agents and salesmen were to be made from all-wool fabrics, when in truth and in fact the garments so advertised and sold by said respondents' agents or salesmen were not made from all-wool fabrics but from fabrics containing a substantial amount of material other than wool, principally cotton.

(c) That a limited number of customers, or purchasers during a limited time, would receive two suits of clothing, or two garments, for the price of one, when in truth and in fact the prices actually paid by said purchasers or customers for said suits or garments were not limited to any group or number of customers, or for any period of time, and were as much as, or more than the retail prices received for said garments when sold by the retail stores owned or controlled by said individual respondents as aforesaid.

(d) That said purchasers or customers would be given an opportunity to inspect suits or garments purchased from agents or salesmen of respondents before being required to pay the balance due after the initial payment has been made to said agents or salesmen, when as a matter of fact said suits or garments are sent by respondent corporation to the purchasers thereof C. O. D., thus giving the said purchasers or customers no opportunity to inspect said suits or garments before paying for same in full.

(e) That said respondents promise or guarantee fit and satisfaction or the purchase price will be refunded to the purchasers or customers, when in truth and fact, said respondents do not and will not refund the purchase price in full, to dissatisfied purchasers or customers, and partial refunds are made only when said respondents are forced to do so by threats of suit or prosecution by the purchasers or customers.

PAR. 6. The use by the respondent corporation, under the direction and control of individual respondents, Martin and Alexander, of the numerous false and misleading statements and representations here-

inbefore described has the capacity and tendency to cause, and has caused many of the purchasing public, residing in the various States of the United States, to purchase clothing from the respondent corporation in the belief that the suits or garments thus purchased were all wool, made to order on the measurements of the purchasers or customers from materials selected by them, at special sales prices, whereby they would receive two garments for the price of one, and that said purchasers or customers would be allowed to inspect said suits or garments before being required to pay the balance due after the initial payment is made. The use of said false and misleading statements and representations by the respondents as aforesaid has the further capacity and tendency to cause members of the public to purchase men's suits and other garments from the respondents in preference to the men's suits and other garments sold and distributed by competitors of said respondent as set forth in paragraph 1 hereof.

PAR. 7. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the written waiver of respondents, of taking of testimony, findings as to facts, filing of briefs, oral argument and all other intervening procedure as well as the consent of said respondents that an order shall issue herein for them to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon concluded that respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, the Alexander-Martin Co., a corporation, A. H. Martin, and W. R. Alexander, as individuals, their agents, servants, salesmen, and employees in connection with all men's clothing by them and each of them in interstate commerce hereafter sold or offered for sale, do cease and desist from:

(1) Representing that any of said clothing is tailor-made or made specially to order except in cases where such clothing is actually cut to the pattern of the customer's measurements before being made into the finished garment.

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(2) Representing that two suits are being offered and sold to customers or prospective customers at or for the price of one suit when such is not the case.

(3) Representing that the purchaser of such garments will have a reasonable opportunity to inspect same before paying the balance due thereon where such shipments are to be made C. O. D. without such privilege.

(4) Representing that they make full refund in accordance with their guarantee of fit and satisfaction unless and until they do make such refund after a reasonable attempt at adjustments with a dissatisfied customer has been made and found unavailing.

It is further ordered, That the said respondents within 60 days from and after the date of the service upon him of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they and each of them are complying and have complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

EBROCLO SHIRT COMPANY, INC.

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

Docket 1883. Complaint, Dec. 11, 1930—Decision, Nov. 16, 1931

- Where a corporation engaged principally in the sale of its so-called "Ebroclo" shirts, and, to a lesser extent, of underwear, hosiery, merchandise and other articles of wearing apparel, and, excepting less than 5 per cent of its shirts, doing no manufacturing,
- (a) Captioned a folder distributed by it among the numerous house to house canvassers through whom it sold aforesaid articles, "HOME OF EBROCLO SHIRTS," and displayed thereon a representation of a large 6-story building, and made such statements therein in connection with cuts showing various manufacturing operations as "Ebroclo cutting department," "portion of Ebroclo sewing department," and such representations as "Backed by the Ebroclo company delivering shirts of the very best quality * * * direct from factory to wearer—the shortest way—You can save your customers money," "There are many irresponsible concerns imitating our methods. They are jobbers and not manufacturers," "We are one of the largest manufacturers of shirts in this country, selling *direct from factory to wearer*," fact being building in question and various pictures displayed within the folder showing cutting, sewing and other operations were those of a manufacturer from whom it principally bought the shirts dealt in by it;
 - (b) Provided its aforesaid canvassers with order blanks and sample books respectively containing the words "from factory to you" and "factory to wearer," and in form letters sent to its representatives and on credit and debit slips employed by it made use of the words respectively "direct from the manufacturer" and "direct to wearer," and acquiesced in use of letterheads by a district agent featuring the words "factory to wearer,"
 - (c) Listed itself in the classified section of the telephone directory in the bold face, paid advertising, as "SHIRTS Ebroclo Shirt Mfg. Co., Inc., Mfrs. Shirts, Underwear and Pajamas," etc.;
 - (d) Featured the alleged English broadcloth composition of its shirts, emphasizing the quality and properties of said fabric and setting forth that it was "in greater demand than any other shirting material known," that it sold nothing but "GENUINE ENGLISH BROADCLOTH SHIRTS," and that the name "Ebroclo" employed by it was a derivative of and stood for English broadcloth, facts being material employed was not English broadcloth, nor cloth made in England;
 - (e) Employed the words "nu-silk," "new silk," and "silk" in referring to and describing the ties and hosiery dealt in by it, and acquiesced in such statements as "new silk ties," "men's silk hose," and "FACTORY TO WEARER" by its district representative or manager and set forth in its trade organ a depiction of the "EBROCLO NU-SILK Plant Exclusively—every foot of the floor space devoted to taking care of *your business*. Every item * * * sold '*direct to the wearer*' only," fact being words "Nu Silk"

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or "Nu Silk Co." represented a trade name employed by its president in conduct of a neckwear and hosiery business doing no manufacturing, but selling articles dealt in through it, as a selling agency, and said articles were wholly rayon in some cases, and in substantial part composed thereof in others, and in case of only an inconsiderable percentage thereof were of silk;

With capacity and tendency to mislead and deceive ultimate purchasers of products concerned into believing in truth of aforesaid false and deceptive representations relating to its being a manufacturer selling articles above set forth direct to wearer, and dealing in shirts composed of English broadcloth, and in neckwear and hosiery composed of silk, and with effect of diverting trade from competitors truthfully advertising and branding their products, and with capacity and tendency so to do:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of competitors and constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Frazier & Frazier, of Greensboro, N. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a North Carolina corporation engaged in the purchase, sale and distribution of shirts, underwear, hosiery, neckties and other wearing apparel to purchasers in the various States, and with principal place of business in Greensboro, with misrepresenting business status or advantages, advertising falsely or misleadingly and misbranding or mislabeling as to composition and source or origin of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for more than two years last past, in selling and soliciting the sale of said wearing apparel, has—

Represented, designated, labeled, and described same as "From factory to wearer," or "Direct to wearer," or "Direct to wearer only," and represented wearing apparel as sold direct from the factory or manufacturer to wearer, so as to eliminate middlemen's profits, and itself as the manufacturer thereof, facts being said apparel was resold at a profit by respondent, after purchase from the manufacturers, and not direct to wearer, and middlemen's profits were not eliminated;

Represented, designated, labeled, and described certain apparel not composed in whole or in substantial part of silk, product of the

cocoon or silkworm, as "silk," or "new silk," or "nusilk," or "ebro-clo-nusilk products"; and

Represented, designated, labeled, and described its shirts made of domestic cloth, as "English broadcloth shirts."

Such acts and things, as alleged, "have had and have the capacity and tendency to mislead and deceive, and to confuse the purchasing public into the belief that the said wearing apparel so designated and advertised is sold direct from the manufacturer to the consumer or purchaser and/or that the said wearing apparel is sold to the purchasers thereof without any profit save that of the manufacturer, and to confuse the purchasing public into the belief that the said wearing apparel so designated and advertised is composed in whole or substantial part of silk, the product of the cocoon, or silkworm"; to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Ebroclo Shirt Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Federal Trade Commission, and the Commission having considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ebroclo Shirt Co., Inc., is now and has been for several years last past a corporation organized under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located in the city of Greensboro in said State.

PAR. 2. Respondent is, and has been, engaged for more than two years last past in the purchase, sale and distribution of shirts, underwear, hosiery, neckties, and other wearing apparel in commerce between and among various States of the United States, and has caused said articles of wearing apparel when purchased by it to be shipped

from the several places of manufacture in States other than the State of North Carolina to respondent's place of business in Greensboro, N. C., and when said articles are sold by respondent, it has caused and causes the said articles to be forwarded by mail from Greensboro, N. C., to the purchasers thereof located in various States of the United States other than the State of North Carolina.

Respondent sells the shirts, underwear, hosiery, neckties, and other articles of wearing apparel through salesmen or representatives who solicit and take orders from house to house and who forward said orders to the respondent in Greensboro, N. C., whereupon respondent forwards the articles through the mail from its place of business in Greensboro to the various places where the purchasers thereof are located.

The respondent does not sell to stores or retailers, and is in direct competition with other corporations, firms, partnerships, and individuals who use methods of purchase, sale and distribution similar to those used by the respondent. Among said competitors are the Carlton Mills, New York, N. Y.; The Quaker Shirt Co., New York, N. Y.; the Rose Cliff Manufacturing Co., New York, N. Y.; the Stetson Shirt Co. and the Browhard-Ranier Shirt Co., both of Cincinnati, Ohio; the New Process Corp., of Warren, Pa., and the Bostonian Manufacturing Co. of Boston Mass. All of the said competitors are sellers and distributors of shirts, and with the possible exception of the New Process Corp., none of them manufacture the shirts which they sell and distribute.

Respondent has installed in a building in Greensboro, N. C., three sewing machines run by power, upon which three seamstresses are engaged in making certain specially made shirts. With the exception of said specially made shirts, which amount to less than 5 per cent of respondent's shirt business, the shirts purchased and sold by it as aforesaid are manufactured principally in Baltimore, Md., and shipped to the respondent in Greensboro, N. C., on a consignment basis.

Of its annual business of approximately \$250,000, the greater part is from the sale of said shirts. Respondent also handles a line of neckwear and hosiery, which it obtains from the NuSilk Co., a trade name for a business owned by the president of the respondent company.

PAR. 3. The respondent has a large number of salesmen or representatives throughout the United States who solicit business for it on a commission basis, and to these agents the respondent sends literature describing the products which it sells. During the years

1926 and 1927, among other literature respondent distributed to its representatives a folder or booklet entitled "Home of Ebroclo Shirts," and on the cover of this folder appears a representation of a large six-story building, and on the inside pages appear cuts showing various stages through which the shirts pass in the making, and under these cuts the following statements are made:

Ebroclo Cutting Department

Cutting Ebroclo Collars and Cuffs; Steel Die Process, Insuring Absolute Uniformity

Portion of Ebroclo Sewing Department

Portion of Ebroclo Laundering and Starching Room, etc.

Portion of Ebroclo Pressing Department

In the body of the said folder respondent made the following representations:

Backed by the Ebroclo company delivering shirts of the very best quality, style, and workmanship *direct from factory to wearer*. The shortest way. You can save your customers money and give them value for every cent.

There are many irresponsible concerns imitating our methods. They are jobbers and not manufacturers.

We are one of the largest manufacturers of shirts in this country, selling *direct from Factory to Wearer*.

The building depicted on the outside of the said folder as the Ebroclo Shirt Co., Greensboro, N. C., was the plant of the Marlboro Shirt Co., located in Baltimore, Md., and the various pictures within the folder showing the cutting, sewing, laundering, and packing operations as stated above were pictures taken of the various operations of said Marlboro Shirt Co.

Some two thousand similar folders were printed by respondent and all of them distributed to respondent's sale representatives for their use in building their sales talks, except several hundred, which had not been distributed at the time the respondent discontinued using them during the latter part of 1927, and which were destroyed at that time.

At the same time that respondent distributed the aforesaid folders it also provided its representatives with order blanks to be used by them, in which the phrase "From factory to you" appears, and in form letters sent to its representatives, respondent made use of the expression "Direct from the manufacturer."

On letterheads used by the respondent's district agent or representative at Miami, Fla., during the years 1929 and 1930, which letterheads came directly to the notice of respondent, appear in large type the words "Factory to wearer."

On the outside cover of a sample book furnished by respondent to its representatives during 1925 and 1926, but which has not been used since 1926, and which was shown to prospective customers by respondent's sales representatives, appear in large type the words "FACTORY TO WEARER."

On credit and debit slips and on shipping orders which were used by respondent up to August, 1930, appear the words "DIRECT TO WEARER."

The respondent sends the literature which contains the above descriptive language for the purpose and with the intent of furnishing to its representatives, points which they desire their agents to pick up and use in their sales talks to the consuming public.

PAR. 4. In the Greensboro Daily Record Standard Classified Business Directory for 1929, at pages 6 and 46 respectively, the respondent is listed as a manufacturer, the reference on page 6 being under a numerical business telephone directory index, and the one on page 46 being as follows:

SHIRTS

Ebroclo Shirt Mfg. Co., Inc., Mfrs.

Shirts, Underwear and Pajamas

1001-1005 South Elm Street, Tel. 1374

Similar listings are found in the Greensboro Daily Record Standard Classified Business Directory for 1930 at pages 3 and 39. In the March 4, 1930, issue of the Greensboro Daily Record, which paper is sent to those subscribers living outside the State of North Carolina, on page 13 appears a listing or advertisement of the respondent in language similar to that appearing in the Classified Business Directory, *supra*.

The black or bold-faced type in which the advertisements or listings of the Ebroclo Shirt Co., Inc., appeared in the above publications indicated that they were paid advertising, and an examination of the listing of another shirt company, immediately following that of the respondent, in which the name of said other company appears in small and light-faced type, indicates that it was not paid advertising.

PAR. 5. Among the shirts sold and distributed by the respondent during the years 1926 and 1927 were shirts made from a material which in the United States, is to the trade and to the consuming public known as broadcloth, and this word when applied to a material for shirting signifies a highly mercerized cotton fabric. These shirts were described by respondent, during the period stated, to its agents as follows:

WHY WE CONCENTRATE ON ENGLISH BROADCLOTH

Through several years of experiments and tests of various materials, we have found that English broadcloth renders to the wearer the greatest value, dollar for dollar, of any material. English broadcloth stands defiant in the field of quality merchandise that is in great demand, and is correct for any and all occasions. English broadcloth is in greater demand than any other shirting material known. The name EBROCLO (registered by us in U. S. Patent Office) is derived from and stands for the product: E for English, BRO for broad and CLO for cloth.

Our entire product is sold by Ebroclo representatives direct from *factory to wearer*, thereby eliminating all intermediate profits between maker and wearer. We sell nothing but *genuine English broadcloth shirts*.

The material of which the above described shirts were made was not English broadcloth, nor was it cloth made in England.

On letterheads used by the district representative or manager of the respondent, located at Miami, Fla., which letterheads were used with the knowledge of the respondent from June, 1929, to March, 1930, the following language appears:

EBROCLO SHIRT COMPANY, INCORPORATED

Greensboro, N. C.

English Broadcloth Shirts, Underwear and Pajamas

The New Silk Ties and Men's Silk Hose

FACTORY TO WEARER

Swift & Blackwell, District Managers

213 Congress Building

Miami, Florida-----192--

PAR. 6. In a publication prepared and distributed by respondent, sometimes monthly, sometimes quarterly, under the name and title "Strate Stuff," on page 2 of an issue circulated early in 1930, appears a cut representing a building of the factory type, and under said cut the following:

HOME PLANT—GREENSBORO, N. C.

Here is a picture of the home plant—a picture of the business in which you are a partner. This is the Ebroclo-Nu-Silk plant exclusively—every foot of floor space devoted to taking care of *your business*. Every item we sell is sold *direct to the wearer* only.

H. C. Chandgie, the president of the Ebroclo Shirt Co., Inc., is also the owner of a business which he operates under the name and style of NuSilk Co. This is not a corporation, but is a trade name under which neckwear and men's and ladies' hosiery is handled. The so-

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called NuSilk Co. does not manufacture any of the goods which are sold under that trade name, but buys its goods from manufacturers and through an arrangement with the respondent as its selling agency, has its neckwear and hosiery handled through the sales representatives of the Ebroclo Shirt Co.

To the sales representatives employed by respondent, the respondent sends out literature in which Ebroclo and NuSilk are linked together and furnishes its salesmen with sample books containing samples of the so-called NuSilk ties and hosiery. This sample book is shown by the salesmen to prospective customers, and on the outside of said sample book, in large letters, appears the following:

NUSILK
TIES—HOSE,
Greensboro, N. C.

On the inside of the said sample book, the words "NuSilk Ties," "NuSilk socks for men," and "NuSilk full fashioned fine ladies hosiery" appear.

In a sample book currently used by respondent, immediately after the pages containing samples of the so-called NuSilk ties, appears the following statement:

NuSilk socks for men. NuSilk wears well because it is new silk.

In a letter of instruction given by respondent to its salesmen, the following language is used:

NuSilk four-in-hand ties are made from the very finest grades of silk attainable.

Six of the said men's so-called silk ties were tested and analyzed by the Bureau of Standards of the United States Department of Commerce, which bureau reported that one of the said ties was wholly rayon, and that the other five contained from 46.51 per cent to 69.55 per cent each of rayon, the remainder being silk. Some of the socks sold by respondent under the brand name "NuSilk" are silk and others are part silk only. An inconsiderable percentage of the ties sold by respondent as silk ties are all silk, some of them being 100 per cent rayon or cellulose acetate rayon, some of them being silk in one direction and rayon in the other, some of them being silk in one direction and rayon and cotton in the other, and some being rayon in one direction and cotton in the other. Of forty-four samples tested by the Bureau of Standards of the Department of Commerce, in addition to the six ties above mentioned, one sample only was found to be all silk.

PAR. 7. Respondent is not a manufacturer and does not manufacture the shirts or other wearing apparel sold and distributed by it as aforesaid, nor are the said shirts and other wearing apparel sold direct from the factory to the wearer, or direct to the wearer, except for an inconsiderable number of so-called specially made shirts; the shirts sold and distributed by respondent are not English broadcloth shirts, and the men's neckwear or ties and hosiery sold or distributed by respondent as aforesaid under the trade name or brand "NuSilk" and represented or advertised by respondent to be silk or new silk or NuSilk are not composed wholly of silk, the product of the silkworm or cocoon, and the above false and deceptive representations have the capacity and tendency to mislead and deceive the ultimate purchasers of said products into the belief that said representations are true, and tend to and do divert trade from competitors who truthfully advertise and brand their products.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and briefs in support of the complaint and in opposition thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, Ebroclo Shirt Co., Inc., its officers, representatives, agents, servants, and employees, cease and desist in connection with the sale and distribution of shirts, underwear, hosiery, neckties, and other wearing apparel in interstate commerce—

(1) From the use, or authorizing the use by others, of the words "manufacturer" and "manufacturers," or any abbreviation thereof,

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and the phrases "Factory to wearer," "From factory to you," "Direct from the manufacturer," "Direct to wearer," or any phrase, slogan, or pictorial representation of similar import; or any statement or representation whatsoever that respondent is the manufacturer of the shirts, underwear, hosiery, neckties, and other wearing apparel sold and distributed by it; or any statement or representation or pictorial representation importing or implying that respondent is selling and distributing its commodities direct from the manufacturer or factory to its customer purchasers without the intervention of middlemen.

(2) From directly or indirectly representing, describing, advertising, branding, or labeling with the word "NuSilk," or the words "new silk," or any word or words of similar import, any cloth or fabric or articles of wearing apparel made therefrom which are not composed wholly of silk, a product of the cocoon of the silkworm.

(3) From the use, or authorizing the use by others, of the words "English broadcloth" to represent, describe, advertise, brand, or label shirts unless such garments be made from broadcloth made in England.

And it is further ordered, That the respondent, Ebroclo Shirt Co., Inc., within 30 days after the date of service upon it of this order, shall 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
MADISON MILLS, INCORPORATED

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

Docket 1776. Complaint, Dec. 9, 1930.¹—Decision, Dec. 14, 1931

Where a corporation engaged in sale of men's shirts, pajamas, and underwear, through use of sample lines which exaggerated extent and variety of its stock, and through use of house to house canvassers, who collected and retained 25 per cent of purchase price as their commission, and forwarded orders for filling, and transmission direct to customers,

- (a) Made it a practice and followed a policy of shipping shirts differing in design, pattern, and style from those ordered, C. O. D., without privilege of inspection, and without first giving customer notice of exhaustion of stock of particular garment ordered and opportunity for further selection; with result that it collected from customers for shirts neither ordered, nor intended to be paid for, and many were disappointed and dissatisfied through not receiving shirts which it had been represented they were to receive;
- (b) Represented that dissatisfied customer's money would be returned "at once, without question," facts being that on frequent occasions refunds were not made except after months of "wrangling" or other annoying and unsatisfactory experiences to those interested in obtaining such refunds; and
- (c) Made use of such words as "Mills," "shirt manufacturers," "better Madison made shirts," "factory to wearer," "compare this factory to wearer price with that asked by retail stores for the same quality shirts," facts being that it had no mill for manufacturing, did not manufacture shirts advertised and sold by it, nor sell such shirts direct to consumers at a price including only one profit, but caused same to be made for it under contract with another and separate company, under a different name and at a different location, and at an expense which it passed on to the consumer;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of such product, and injure competitors to a substantial extent through unfairly diverting trade from them to it:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission

Mr. Maximilian Bader, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

¹ Amended and supplemental complaint.

respondent, a New York corporation engaged in the sale and distribution of men's shirts to purchasers located in various States of the United States, and with principal place of business in New York City, with offering deceptive inducements to purchase through non-compliance with orders per sample, and unfulfilled money-back promises and guaranties, assuming or using misleading trade or corporate name, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for more than one year last past, through the medium of agents, house to house canvassers, or through the mails direct to the purchaser, furnishes purchasers with certain samples, sample books and other printed matter, illustrating design, pattern, and material of said shirts and cautioning the purchaser to "be sure to mention style numbers wanted," and in addition thereto guarantees prospective purchasers and purchasers of its shirts that "if in fabric, in fit, and price they are not the best values ever seen by said purchasers, the said shirts may be returned at respondent's expense and the money will be refunded at once without question, and that the customer will be satisfied by respondent," and thereby solicits and obtains orders and cash remittances based upon particular selections. Notwithstanding aforesaid representations and guarantees, however, respondent, in cases in which particular design and pattern ordered is not in stock, makes it its practice, in order to promote sale of its products in such cases, to send customer some other selection, of respondent's own choosing, without offering customer a voice in the matter, or to return his money, and declines to make refunds to dissatisfied customers at once and without question, upon return of the shirts.

Respondent further, as charged, through use of corporate name, "Madison Mills, Inc." and phrases, "Better Madison Made Shirts," "Shirt Manufacturers," and "Factory-to-Wearer Price," on leaflets, pamphlets, sample cards, and other advertising literature, represents to purchasers and prospective purchasers that it "actually makes, manufactures, or fabricates the said shirts and that it owns, operates, or controls a mill or mills or other manufactory where such shirts are manufactured when in truth and in fact respondent does not own or operate or control any mill, mills, or manufactories at which said shirts are made or fabricated, but the shirts are actually manufactured for respondent under contract by another and separate company of a different name and at a different location, at an expense which is passed on to the consumer."

Said representations and practices of respondent, as alleged, "have the tendency and capacity to mislead and deceive purchasers, agents and customers of such agents" into the mistaken belief that ordering and buying shirts from respondent they "will receive satisfaction and will receive the article by them, or each of them, so ordered and paid for," and that they "are dealing directly with the manufacturer of the said shirts" and "are thereby eliminating a middleman's profit"; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Madison Mills, Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer and the case was set down for the taking of testimony in due course before an examiner of the Commission. Without objection by respondent, evidence was adduced tending to prove that at the time of the hearings and for more than one year prior thereto the respondent did not own, operate, or control any mill or manufactory and did not itself manufacture, make, or fabricate its product as advertised. Thereafter, upon due notice the Commission issued and served its amended and supplemental complaint to conform to the aforesaid proof. Respondent filed its answer both to the original and to the amended and supplemental complaint and further evidence was taken.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission, counsel for respondent having been duly notified and not having appeared to present oral argument. The Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Madison Mills, Inc., is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 560 Broadway, New York City, State of New York. It is now and for more than eight

years last past has been engaged in the sale and distribution of men's shirts, pajamas, and underwear to purchasers located throughout the various States of the United States. In the course and conduct of its business, respondent is in competition with other corporations, individuals, and partnerships engaged in commerce between and among the various States of the United States.

PAR. 2. Respondent sells its merchandise through the services of agents who canvass from house to house. The agent collects 25 per cent of the purchase price from the purchaser at the time the order is taken and retains said sum for his commission. The agent then forwards said order to the respondent who ships the goods direct to the consumer C. O. D. without the privilege of inspection, thus collecting the remaining 75 per cent of the purchase price. In soliciting such business, respondent through its agents and directly through the mail, distributes samples, sample books, and other printed matter, illustrating the colors, designs, patterns, and material of the shirts offered for sale and guarantees that if in fabric, in fit and price, they are not the best values ever seen by the purchaser, the shirts may be returned at its expense and the money refunded at once without question.

PAR. 3. The sample cards, such as Commission's Exhibit 1, contain small samples of cloth, each of which, in the absence of printed exceptions or notice to the contrary, is represented to be identical with the cloth composing the shirts which respondent will send in case the customer selects the particular sample and number. The sample card, Commission's Exhibit No. 1, contains no suggestion of substitution but cautions the agent and purchaser to be sure in ordering to mention pattern and style number and to give the letter designating the introductory sale lot. In other sample cards such as Commission's Exhibit 4, notice of substitution was given in case the stock should be short in any of four of the twenty-five numbered samples displayed. Also respondent now usually incloses with its sample cards a notice reading as follows:

IMPORTANT NOTICE

When selling fancy patterns, mention 2d choice. We *do not* guarantee to deliver exact patterns at all times. Fancy patterns are discontinued from time to time. Madison's liberal guaranty covers all purchases of our shirts.

Whenever we furnish a pattern, other than selected, the purchaser always has the right to return same and we will refund not only his money but the postage expense to which he has been put. Our policy is the customer is always right and must be satisfied.

Respondent also publishes and circulates among its agents a house paper called "The Mirror," which is sent out about once a month, but

sometimes a month's issue is omitted. This publication contains stock corrections in a list showing the regular numbers which have been exhausted and for which the agents should solicit no more orders. Agents are supposed to mark the discontinued numbers from their lists. Stock list corrections are also sometimes sent by postcard.

The time when the "important notice" aforesaid was printed and sent out was not known to respondent's officers, and it appeared from the evidence that notices were not sent to some of the customers nor to some of the agents. One Anton R. Johnson testified that if he had seen any such notice, he never would have ordered from the respondent. Mr. Johnson had made his purchase in a territory where agents of a competitive company had been taking orders for shirts. One agent in New Jersey, a Mr. Risdon, also testified that he never saw any such "important notice" before it was handed to him at the time of his testimony; that many orders were improperly filled and substitutions made although he corrected his list in accordance with all notices sent out by the company. From all the evidence the Commission finds that there was not a consistent use of such notices and in many instances they were not sent at all to agents and customers.

The evidence shows that it is and has been the practice and formulated policy of the respondent, when the particular shirts ordered are out of stock, instead of shipping customers shirts of the design, pattern, and style ordered and paid for, to ship its customers shirts of substituted designs, patterns, and styles of its own selection. By reason of the fact that such shipments are made C. O. D., without the privilege of inspection, respondent collects from its customers in such cases the remaining 75 per cent of the purchase price for that which said customers did not order and did not intend to pay for, without first giving such customers notice thereof or opportunity to make a further selection of their own.

The Commission finds that the respondent procures sales by representing to the prospective purchasers and leading them to believe that it will ship shirts of the designs, patterns, or styles selected and ordered by the said purchasers. When considering the aforesaid practice and formulated policy of respondent such representation is untrue in those numerous instances where substitutions have been and are being made.

PAR. 4. As a consequence of respondent's aforesaid practice and policy a great many customers were disappointed and dissatisfied by not receiving the shirts which respondent had represented they were to receive.

It appears from the testimony of M. M. Samuels, treasurer of respondent, that the returned goods averaged about 3,000 shirts per year and from the testimony of Charles Hickman and Guy Peterson, that many unsatisfactory shipments were not returned. In one case, witness did not want to take the extra trouble. In another case, circumstances rendered necessary the purchaser's retention of the undesired substitute.

George T. Risdon, an agent, testified that fully 40 per cent of his orders were filled unsatisfactorily. The Commission finds that the percentage of returns was in excess of the amount testified to by the officer of the respondent aforesaid; that the testimony throughout discloses a system and practice on the part of respondent of securing orders by the use of sample lines which did not, in a great many cases, represent the actual stock it had for delivery, but exaggerated the extent and variety of such stock and induced customers to order who would not have done so had the true state of affairs been revealed.

One of many instances set forth in the transcript of testimony is here set forth as illustrating the nature of customers' and agents' grievances:

Charles Hickman, Forsyth, Mont., testified that he received the sample card in evidence as Commission's Exhibit 1, and from it ordered three numbers, none of which even approximated the samples either in quality or design; that these differences are shown by the samples and attached clippings displayed in Commission's Exhibit 1; that other orders which he had given respondent were filled by substitutions; that instructions were disregarded and money not refunded satisfactorily; that on one occasion he designated a second, third, and fourth choice but received a shirt entirely different from any of them; that he had received the stock list corrections and kept his line up to date but had never seen the printed slip entitled "important notice"; that six shirts were ordered at one time for a Mr. Stickler and only one shirt came as ordered, five were substitutions both in material and pattern; that substitution was made in disregard of direct and specific instructions to the effect that shipment be not made unless the order could be filled as specified; that return of money was not made in one case until after "three months' wrangling"; and that on account of having had previous annoying and unsatisfactory experience in obtaining refunds for goods returned and because of the extra trouble, inconvenience and delay, some shirts were retained by customers although not satisfactory and not according to order.

Under the practice and policy of respondent, as shown by the evidence, the Commission finds that respondent's representation that a dissatisfied customer's money will be returned "at once, without question" is often untrue and, owing to the manner of its use in inducing sales of respondent's product, constitutes a false and misleading statement by respondent.

PAR. 5. The Commission finds that respondent, on certain exhibits, through the use of the words "mills," "shirt manufacturers," "better Madison made shirts," "factory to wearer," "compare this factory to wearer price with that asked by retail stores for the same high quality shirts," represents itself as making the shirts it sells and, in effect, that because of this, it sells them direct to the consumer at a better price, quality considered, than those of its competitors who reach the consumer through retail distribution.

Mr. A. H. Samuels, treasurer of the respondent company, testified that on June 16, 1930, the shirts were manufactured upon respondent's order by Otto Schoen & Co. at Glens Falls, N. Y.; that in 1928 respondent had factories in Troy, N. Y., Paterson, N. J., or at Coxsackie, N. Y.; but that in 1930 it was having the work done under contract; that Madison Mills buys the dress goods and pays the Schoen company for the sewing, cutting, and labor, and that the employees actually manufacturing the shirts are paid by the Schoen company. Milton M. Samuels, secretary of respondent, corroborated this testimony.

By stipulation it was agreed that certain relevant correspondence might be considered by the Commission to the same full intent and effect as though Mr. A. H. Samuels had so testified, and this correspondence appears in the record as Commission's Exhibits 9 and 11 from which the situation with reference to the manufacturing of shirts was disclosed by Mr. A. H. Samuels as follows:

Please be advised that in the year of 1928, we conducted a factory under our own name and the premises of which was leased by us in our own name, at 2 River Street, Troy, N. Y. In this factory, all the employees were paid directly by us and no work was done excepting for us.

Prior to that date, we conducted a factory at Paterson, N. J. The premises in that city were also leased by us in our own name, and all the employees were paid directly by us and all the work produced was for our own use.

Prior to that factory we conducted a factory at 503-505 Broadway, New York, where the same conditions prevailed.

During 1928 we decided to discontinue our Troy factory. We have since that time continuously manufactured shirts, but have changed our system of manufacturing somewhat. Instead of leasing the places in our own name, the leases are in the names of third parties. Nevertheless, the property in the goods manufactured, is at all times in us. The goods are delivered in the piece to the factory and are shipped back to us as completed shirts. In addition to the

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piece goods, we supply the buttons, the linings, the trimmings, the labels, the boxes, etc. Instead of paying the help directly, the employees are paid by the man who is conducting the factory, and we make an arrangement with this party, whereby we pay him a definite amount per dozen for the labor. This amount is based on the labor conditions prevailing, and in same we include a certain amount for his superintendence and overhead.

Under this system we are manufacturing just as much as we were under the previous systems when we leased the premises in our own names and paid the employees directly.

Such a system is employed by us at Coxsackie, N. Y. The shirts made in the factory at Coxsackie, N. Y., are at all times our shirts. When the goods are shipped to us they are really shipped by ourselves to ourselves.

The only payment which is made to Coxsackie, is the payment of the labor and the superintendence arrived at as above. The factory at Coxsackie is under our control and no other shirts are produced there, excepting our shirts—unless conditions are such that we can not keep the plant busy and may lose help thereby. Under such conditions—with our consent—shirts may be made for third parties.

At various times we have made goods at other places as well as Coxsackie.

As you understand, manufacturing conditions change with business conditions, and naturally we do not keep manufacturing just for the sake of manufacturing—if we haven't the outlet for all the goods produced—or if we happen to have a large stock of goods on hand which we are trying to dispose of.

If conditions improve we are likely to open up a new factory at any time, and if conditions are not so good we are liable to close down a factory which is in operation.

We nevertheless are manufacturers at all times, making the goods that we distribute according to the demand for same, and increasing our production and decreasing same in proportion as the demand increases or decreases for our product.

As a matter of fact we haven't any factory building, nor have we owned any factory building since 1928, with the exception of our factory at No. 2 River Street, Troy, N. Y., which was leased in the name of Madison Mills, Inc.—the rent being paid to Messrs. Crouse & Eckert, at Utica, N. Y.

We believe that this concern owns the building. With the exception of this lease we haven't been the lessees of any building used as a factory since 1928.

This factory at No. 2 River Street has since been discontinued for the simple reason that we have enough goods on hand, and have had enough goods on hand for the last few years, so that it is not necessary for us to keep manufacturing. This is all covered in our letter of March 9, 1931.

At present, the factory at Coxsackie, N. Y., is run by Mr. G. Wilson. For further details as to this we also refer to our letter of March 9.

There is no written agreement between us and Mr. Wilson, nor has there ever been a written agreement between us. We have enough confidence in each other to make it unnecessary to have a written agreement, and the overhead and other expenses are determined after conferences and discussions.

The Commission finds that the aforesaid Mr. Wilson's profit, as well as respondent's profit, is included in the price at which said shirts are sold to the consumer, and that as a matter of fact respondent has no mill for manufacturing, does not manufacture the shirts

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by it advertised for sale and sold, and does not sell the shirts direct to the consumer at a price which includes only one profit, but that when and as necessary the shirts are manufactured for respondent under contract by another and separate company of a different name at a different location, and at an expense which is passed on to the consumer.

PAR. 6. The foregoing acts, practices, representations, and guaranties, and each of them, made and done by respondent have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's products and have a tendency to injure, to a substantial extent, competitors of respondent by unfairly diverting trade from such competitors to the respondent.

CONCLUSION

The acts and practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors; are unfair methods of competition in commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaints of the Commission, the answers of respondent, briefs and oral arguments, on behalf of both the counsel for the Commission and respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Madison Mills, Inc., a corporation, its agents and employees, in connection with the advertisement, sale or distribution by it in interstate commerce of shirts, do cease and desist, as follows:

(1) Where shipments are made to customers C. O. D. without privilege of inspection, from representing, directly or indirectly, to purchasers or prospective purchasers that it will ship shirts of the designs, patterns, or styles selected and ordered by the said purchasers, unless and until it refrains from substituting shirts of designs, patterns or styles of its own selection different from those by the said purchasers so selected and ordered.

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(2) From representing, directly or indirectly, to prospective purchasers that if the said purchasers are dissatisfied, the purchase price will be refunded at once without question, unless and until it actually does make prompt refunds whenever a shirt is returned by a dissatisfied customer.

(3) From directly or indirectly representing, through the use of such phrases as "Madison made shirts," "mills," "shirt manufacturers," "factory to wearer price," that it is the manufacturer of products sold and distributed by it until such time as said respondent does actually own, operate, or control a manufactory wherein are fabricated or made the shirts which it so sells and distributes.

It is further ordered, That the said respondent within 60 days from and after the date of service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
PHILADELPHIA HOSIERY MILLS

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

Docket 1922. Complaint, Apr. 16, 1931¹—Decision, Dec. 14, 1931

Where a corporation engaged in manufacture and sale of children's stockings with a 70 per cent cotton, and 25 per cent rayon, content, and with wool content which did not suffice to impart warmth or durability to the article, or add any functional value thereto, amounted to 5 per cent, was inconsequential, and not enough to justify use of word "wool" at all in connection with the stockings, stamped the same "70 per cent wool and rayon"; with capacity and tendency to deceive its retail customers and buying public, and induce purchase of said stockings in reliance on truth of said statements as to wool and rayon content thereof, and with effect of diverting trade to it from competitors truthfully and accurately describing their products, and with tendency so to do:

Held, That such practice, under the conditions set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Hon. J. Will Taylor, of Philadelphia, Tenn., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Tennessee corporation engaged in the manufacture and sale of children's stockings, and with principal place of business and factory at Philadelphia, Tenn., with misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, stamps each of its stockings "70 per cent wool and rayon," and said stockings reach consuming public through various retail dealer customers and other retail merchants, branded and stamped as above set forth. "Actual content of the stocking bearing said stamp or brand is approximately by weight 70 per cent cotton, 25 per cent rayon, and 5 per cent wool, so that the combined wool and rayon content is approximately 30 per cent instead of 70 per cent as represented, and the wool content is inconsequential and insufficient to impart to the

¹ Amended.

stocking any desirable quality, such as warmth or durability or to add any functional value to said stocking and is not a sufficient content to entitle the respondent to use the word "wool" at all in connection with the description of said stocking," wool concerned having been added solely to deceive public and to induce purchase of article, as and for one with substantial amount of wool, by those who consider wool content desirable in a stocking.

Said stamp or brand, as alleged, "was designed to deceive and has the capacity and tendency to deceive the customers of respondent and also the purchasing public and to cause them to purchase said stockings in the belief that the statement as to the wool and rayon content is true, and that said stockings contain a substantial amount of wool"; all to the prejudice of the public and respondent's competitors, who include many "engaged in the manufacture and sale, or in the sale, of children's stockings made of wool, silk, rayon, and other materials, which stockings are by them described truthfully and accurately as to content."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes (38 Stat. 719), the Federal Trade Commission on the 16th day of April, 1931, issued its amended complaint against the respondent, Philadelphia Hosiery Mills, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the said amended complaint, hearings were had before a trial examiner theretofore duly appointed, testimony was heard and evidence was received in support of the charges of the amended complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing on brief of counsel for the Commission, no brief having been filed on the part of the respondent, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Philadelphia Hosiery Mills, erroneously named in the original complaint as Philadelphia Knitting Mills is a corporation organized under the laws of the State of

Tennessee, with its principal place of business and factory at Philadelphia in said State. It is now and has been for many years engaged in the manufacture at its said factory of children's stockings and the sale thereof through a selling agency at New York City to retail merchants throughout the United States. It causes its said stockings when sold to be transported from its factory in interstate commerce into and through States of the United States other than that of Tennessee to the purchasers thereof at their respective points of location in the various States. In the course and conduct of its said business the respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation or in the sale and transportation of children's stockings in interstate commerce between and among the various States of the United States.

PAR. 2. The respondent in the course and conduct of its business as above described, places at its factory upon each of the stockings made and sold by it, the following stamp or brand:

70 per cent wool
and rayon

the said stockings reach the consuming public through the various customers of the respondent throughout the United States and other retail merchants, branded and stamped as above set forth.

The said stamp or brand is false and misleading in that the actual content of the stocking bearing said stamp or brand is approximately by weight 70 per cent cotton, 25 per cent rayon, and 5 per cent wool, so that the combined wool and rayon content is approximately 30 per cent instead of 70 per cent, as represented, and the wool content is inconsequential and insufficient to impart to the stocking any desirable quality such as warmth or durability or to add any functional value to said stocking and is not a sufficient content to entitle the respondent to use the word "wool" at all in connection with the description of said stocking.

PAR. 3. The stamp or brand mentioned in paragraph 2 hereof has the capacity and tendency to deceive the customers of respondent and also the purchasing public and to cause them to purchase said stockings in the belief that the statement as to the wool and rayon content is true.

PAR. 4. Among the competitors of respondent, mentioned in paragraph 1 hereof, are many who are engaged in the sale of children's stockings, in interstate commerce, which stockings are made of wool, silk, rayon, and other materials, and are by the manufacturers thereof

described truthfully and accurately as to content. The misrepresentations by the respondent of the content of the stockings which it manufactures tends to and does divert trade from such competitors.

CONCLUSION

The practices of the said respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent, the testimony introduced, and brief on the part of the attorney for the Commission, the respondent upon due notice having failed to file brief, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Philadelphia Hosiery Mills, a corporation, its officers, agents, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, cease and desist from:

(1) Representing by means of brands, stamps, advertisements, or in any other manner that the stockings manufactured and sold by it contain wool unless such stockings do contain wool in a substantial amount.

(2) Representing by means of brands, stamps, advertisements, or in any other manner that such stockings contain wool, rayon, or any other material in excess of the actual amount of such material contained therein.

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
NORTHAM WARREN CORPORATION

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

Docket 1937. Complaint, Apr. 8, 1931—Decision, Dec. 14, 1931

Where a corporation engaged in manufacture of toilet articles and preparations, including those used for manicuring the nails and care of the cuticle, and in the sale thereof, under its trade name, in competition with some 75 or 80 other concerns similarly engaged, and doing a business of two or three million dollars a year, extensively advertised and reproduced in women's periodicals and otherwise photographs of and testimonials by actresses of outstanding fame and women widely known by reason of their social prominence or otherwise, without disclosing that preparation by the advertisers of such testimonials for the signature and approval of said personages had been preceded by payment to them of substantial sums by said advertisers, and their agreement not to indorse any other similar preparation for a period of years, and to test adequately advertiser's preparation here in question; with capacity and tendency to mislead and deceive ultimate purchasers of such preparations into the erroneous belief that said testimonials were entirely voluntary and unbought, and with effect of diverting trade from competitors, who do not use purchased testimonials in advertising their products, and with tendency so to do:

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

Mr. Richard P. Whiteley for the Commission.

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

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation, engaged in the manufacture of toilet articles and preparations, including products designated and referred to by the trade name "Cutex," and sale thereof in commerce between and among the various States, and with principal place of business in New York City, with advertising falsely and misleadingly as to testimonial indorsements, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as above set forth, in advertising its "Cutex," products in magazines of interstate circulation, published testimonials or indorsements obtained by it "from individuals socially and/or theatrically or otherwise prominent and well known to the American public," as the genuine, voluntary or unbiased opinions

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of the alleged authors,¹ facts being testimonials or indorsements involved were obtained from personages concerned through payments of large sums of money and other valuable considerations, author of first testimonial was not a faithful user of said products, as set forth therein, and second testimonial did not represent genuine, voluntary or unbiased opinion of actress involved.

Said acts and things, as alleged, have "the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that the said testimonials or indorsements are the genuine, voluntary or unbiased opinions of the alleged author or authors thereof, and has tended to induce, and has induced the purchase of respondent's Cutex products by said purchasing public in reliance upon such erroneous belief, and has tended to divert trade from, and has diverted trade from, and thereby injured competitors of respondent"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Northam Warren Corp., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint. Thereafter counsel for respondent notified the trial examiner that no testimony would be offered on behalf of respondent, whereupon this proceeding came on regularly for final hearing before the Federal Trade Commission and the Commission having considered the record and being fully

¹ As alleged in complaint, one such testimonial or indorsement so obtained and used by respondent contained the statement: "The new Cutex Liquid Polish is so flattering. I am delighted with the brilliance it gives my nails. I am very careful of my hands—so I am faithful to my Cutex. Before I use the new Cutex Liquid Polish I always soften and shape the cuticle and whiten the nail tips with Cutex Cuticle Remover. Then the Liquid Polish which lasts days and days. After that, a bit of Cutex Cuticle Cream or oil to feed the cuticle and my hands can meet even my husband's critical artist's eye."

Another such testimonial or indorsement obtained and used by respondent as above set forth contained the statement, represented as emanating from "———, the best loved actress on the American stage" that:

"To get the full effect of personality, everything must flatter us to our very finger tips.

"The hands particularly must be sparkling. I find the new Cutex Liquid Polish keeps my finger tips radiantly fresh and crisp—gives them just the necessary touch of flattering sparkle. I take along a Cutex Manicure Set on all my tours."

advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Northam Warren Corporation, has been for several years last past and now is a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business in the City of New York in said State.

PAR. 2. Respondent is, and has been engaged for more than two years last past in business in the manufacture, sale, and distribution of toilet articles and toilet preparations including preparations used for manicuring nails and the care of the cuticle, sold under the trade name "Cutex," causing said products when so sold to be transported from the place of manufacture in the State of New York to purchasers thereof located in States of the United States other than the State of New York. In the sale of the said preparations used for manicuring nails and the care of the cuticle sold under the trade name "Cutex," respondent at all times hereinafter mentioned has been, and still is, in competition with other corporations, individuals, firms, and partnerships likewise engaged in interstate commerce in the sale of preparations used for manicuring nails and the care of the cuticle. The principal preparations used for manicuring nails and the care of the cuticle sold by respondent as aforesaid are "Cutex," "Cuticle Remover," "Liquid Damp Polish," "Liquid Polish Remover," "Powder Polish," "Cake Polish," "Nail White," "Cuticle Oil," "Cuticle Cream," and a variety of manicure sets incorporating most of said specified preparations. The sales of Cutex preparations amount approximately to two or three million dollars per annum, and respondent sells to all classes of trade, namely, wholesalers, jobbers, and retailers. In the sale and distribution of the aforesaid Cutex manicure preparations, respondent is in competition throughout the United States with some seventy-five or eighty other corporations, partnerships, firms, or individuals likewise engaged in the sale and distribution of toilet articles and preparations used for similar purposes, some of the principal competitors being Coty, Inc., Harriet Hubbard Ayer, Hudnut, Lustrite Corporation, Gloray, Hyglo, DuBarry, and Barbara Gould. Some of these competitive preparations sell for the same price as the Cutex preparations and some are slightly lower or slightly higher in price.

PAR. 3. Respondent corporation, in the course and conduct of its said business as hereinbefore described, during the years 1928, 1929, and 1930, in the sale of its products in the several States of the United States, has caused advertising matter to be prepared, published, and

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circulated in and among the various States of the United States through National Women's Magazines, through trade papers and newspapers, and over the radio. The women's magazines are used more extensively by respondent in its advertising than are the trade papers and newspapers and the principal magazines so used are the Ladies Home Journal, the Woman's Home Companion, McCall's Magazine, the Delineator, Pictorial Review, Cosmopolitan, Vogue, Harper's Bazaar, and the so-called Tower Group of magazines that are sold through the Woolworth stores. Beginning in the latter part of 1928 and continuing until May, 1930, the respondent, in the course and conduct of its business, as aforesaid, and in advertising its Cutex preparations caused to be published and circulated in the aforementioned women's magazines throughout various States of the United States as part of its advertising campaign, testimonials or indorsements obtained from individuals, socially and/or theatrically or otherwise prominent and well known to the American public.

Under date of August 28, 1928, through its advertising agency, the J. Walter Thompson Co., the respondent obtained from Ethel Barrymore the following permission:

Aug. 28, 1928

Colony Club, New York City

I hereby give the Northam Warren Corp. and/or the J. Walter Thompson Co. permission to use in its advertising, my photograph and/or my name and/or a statement to be submitted to me and which, when approved by me, I agree to sign.

I agree not to indorse any other manicuring product, and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

Signature ETHEL BARRYMORE

Under date of October 13, 1928, Ethel Barrymore gave the following authorization:

Oct. 13, 1928,

144 East 55 St., New York City

In connection with the agreement with The Northam Warren Corp., signed by me, on ——— I authorize the use for advertising of the following statement or any part thereof.

"EVERYTHING MUST FLATTER US TO OUR FINGER TIPS"
SAYS ETHEL BARRYMORE

The best loved actress on the American stage adds: "And of all the ways of grooming the finger tips I find the new Cutex Liquid Polish the most flattering."

"To-day, all the world's a stage," quoted Ethel Barrymore, gaily. "Everywhere fastidious women are faultlessly beautifully groomed, and the spotlight of attention is always on them."

"To get the full effect of personality everything must heighten, everything must flatter us to our very finger tips."

"The hands particularly must be sparkling. I find the new Cutex Liquid Polish keeps my finger tips radiantly fresh and crisp—gives them just the necessary touch of flattering sparkle.

"I take along a Cutex manicure kit on all my tours. A bit of the Cuticle Remover and cream, applied now and then keep my shining nails ready for their cue!"

Signature ETHEL BARRYMORE

For the above permission to use and the testimonial accompanying same there was paid to Ethel Barrymore for account of respondent the sum of \$1,000.

Thereafter respondent caused to be inserted and circulated in the Delineator for February, 1930, Ladies' Home Journal for February, 1930, McCall's for March, 1930, Pictorial Review for April, 1930, a reproduction of a picture of Miss Barrymore, together with the following statement:

Ethel Barrymore, the best loved actress on the American stage says: "To get the full effect of personality, everything must flatter us to our very finger tips."

"The hands particularly must be sparkling. I find the new Cutex Liquid Polish keeps my finger tips radiantly fresh and crisp—gives them just the necessary touch of flattering sparkle. I take along a Cutex manicure set on all my tours."

On October 22, 1928, respondent caused to be obtained through its advertising agency, J. Walter Thompson Co., from Anna Pavlowa the following permission and statement:

LONDON, W. C. 2 BUSH HOUSE, ALDWYCH

October 22nd, 1928.

I hereby give the Northam Warren Corp. permission to use in its advertising, my photograph, and/or my name, and/or the following statement or any part thereof.

I agree not to indorse any other manicuring product for a period of three years and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

"MY HANDS TOO MUST DANCE"

"It helps to give my hands sparkle and vivacity. I always use it to 'make up' my hands, to keep each fingernail shining, looking truly *soigné*. Indeed, it is used a great deal in Paris—the French women know how it flatters and improves the fingertips. All the Cutex preparations are needed, however, to make the hand ready for this brilliant finish, Cuticle Remover and Cream to keep the oval smoothly rounded and the under nail tips immaculately clean."

Signature ANNA PAVLOWA

For the above permission to use and the testimonial accompanying same there was paid to Anna Pavlowa for the account of respondent the sum of one hundred pounds. Thereafter, respondent caused to be inserted and circulated in the Woman's Home Companion of May, 1930, Ladies' Home Journal for May, 1930, Canadian Home Journal

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for May, 1930, a reproduction of a picture of Anna Pavlova, together with the following statement:

ANNA PAVLOVA TAKES THE MOST EXQUISITE CARE
OF HER GRACEFUL HANDS

"Cutex Liquid Polish helps to give my hands sparkle and vivacity. I always use it. All the Cutex preparations are needed, however, to make the hand ready for this brilliant finish. Cuticle Remover and Cream to keep the ovals rounded and the tips immaculate."

Under date of July 2, 1929, through its advertising agency, the J. Walter Thompson Co., the respondent obtained from Atlanta Arlen, the wife of Michael Arlen, the novelist, and formerly Atlanta Mercati, the following permission:

Date, July 2, 1929

Address, Mayfair Hotel

City, London W 1

I hereby give the Northam Warren Corp. and/or the J. Walter Thompson Co. permission to use in the advertising of Cutex, my photograph, and/or my name, and a statement to be submitted to me and which, when approved by me, I agree to sign.

I agree not to indorse any other manicuring product, and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

Signature ATLANTA ARLEN

Signature ATLANTA MERCATI

Also under date of July 2, 1929, the said Atlanta Arlen gave the following authorization:

Date, July 2, 1929

Address, Mayfair Hotel

City, London W 1

In connection with the agreement with the Northam Warren Corp. and/or the J. Walter Thompson Co. signed by me on July 2, 1929, I authorize the use for advertising of the following statement and/or any part thereof, or of one similar to it:

"I just can't excuse ill-kept hands. They can *make* or *ruin* a person's appearance! And with the Cutex preparations it is so simple to keep them always lovely! Your new Perfumed Cutex Liquid Polish has revolutionized the manicure! Its delicate lingering fragrance and flattering radiance is *too* intriguing. There are just *three* simple steps—*First*, Cutex Cuticle Remover—to remove dead cuticle bringing out the half-moons, and to whiten the nail tips—*Second*, the Perfumed Polish Remover to remove the old polish, followed by the beguiling Perfumed Cutex Liquid Polish that glistens brightly for a week—the delicate odor makes it so delightful to use—*Third*, Cutex Cuticle Cream or Oil applied around the cuticle to keep it soft and under the nail tip to keep it smooth!"

Signature ATLANTA ARLEN

Signature ATLANTA MERCATI

For the above permission to use, and the testimonial accompanying same, there was paid to Atlanta Arlen for account of respondent the sum of two hundred pounds. Thereafter, respondent caused to be

inserted and circulated in the Women's Home Companion for February, 1930, Delineator for January, 1930, McCall's for February, 1930, Canadian Home Journal for February, 1930, a reproduction of a picture of Mrs. Michael Arlen, together with the following statement:

I am devoted to your new Cutex Liquid Polish. For days and days after using it my nails are delightful. And with so little effort. The Cutex preparations certainly have simplified my manicure.

Under date of March 5, 1929, through its advertising agency, the J. Walter Thompson Co., the respondent obtained from Nancy Palmer Christy, the wife of the noted artist, Howard Chandler Christy, the following permission:

Date, March 5-29
Address, 1 W 67
City, New York

I hereby give the Northam Warren Corp. permission to use in its advertising, my photograph and/or my name, and/or a statement to be submitted to me and which, when approved by me, I agree to sign.

I agree not to indorse any other manucuring product and to test adequately the complete Cutex outfit with which the Northam Warren Corp. will supply me.

Signature NANCY PALMER CHRISTY
Signature Mrs. HOWARD CHANDLER CHRISTY.

Under date of April 1, 1929, the said Nancy Palmer Christy gave the following authorization:

Date, April 1, 1929
Address, 1 West 67 Street
City, N. Y. C.

In connection with the agreement with the Northam Warren Corp. signed by me on April 1, 1929, I authorize for use for advertising the following statement and/or any part thereof; or one similar to it:

The new Perfumed Cutex Polish is so flattering.

I am delighted with the brilliance and delicate fragrance of this new polish. It is a charming idea—a polish that also gives the finger tips an evanescent fragrance. I know my hands are one of my best points and I am careful of them. Before I use the new Perfumed Liquid Polish I always soften and shape the cuticle and whiten the nail tips with Cuticle Remover. Then the Liquid Polish which lasts days and days by the way. After that a bit of the Cuticle Cream or Oil to feed the cuticle and my hands can meet even my husband's critical artist's eye.

Signature NANCY PALMER CHRISTY
Signature Mrs. HOWARD CHANDLER CHRISTY.

For the above permission to use and the testimonials accompanying same, there was paid to Nancy Palmer Christy for account of respondent the sum of \$500, and there was also paid to Miss Lassie Honeyman, a personal friend of Mrs. Christy, for services in helping to secure the said testimonial from Mrs. Christy, the sum of \$150.

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Thereafter, respondent caused to be inserted in McCall's Magazine for April, 1930, Women's Home Companion for April, 1930, Canadian Home Journal, for April, 1930, a reproduction of a picture of Mrs. Howard Chandler Christy, together with the following statement:

The new Cutex Liquid Polish is so flattering. I am delighted with the brilliance it gives my nails. I am very careful of my hands—so I am faithful to my Cutex. Before I use the new Cutex Liquid Polish I always soften and shape the cuticle and whiten the nail tips with Cutex Cuticle Remover.

Then the Liquid Polish which lasts for days and days. After that, a bit of Cutex Cream or oil to feed the cuticle and my hands can meet even my husband's critical artist's eye.

The advertising of respondent appearing as above stated in the several magazines circulated in and among the various States of the United States containing the photographs, names and testimonials secured as stated herein through the payment of sums of money to Ethel Barrymore, Anna Pavlova, Atlanta Arlen, and Nancy Palmer Christy, does not disclose the fact that the respondent had paid said persons for said testimonials. Among the active competitors of respondent there are those who do not use testimonials which are paid for or any testimonials at all in the advertising of said competitive products. Failure to disclose the fact that the respondent paid substantial sums of money to the persons named herein for the testimonials by said persons concerning respondent's Cutex preparations has the capacity and tendency to mislead and deceive the ultimate purchasers of said preparations into the erroneous belief that said testimonials are entirely voluntary and unbought, and tends to and does divert trade from competitors who do not use purchased testimonials in advertising their products.

PAR. 4. There is no proof that the expressions of opinion of and concerning the Cutex products contained in the testimonials appearing in paragraph 3 hereof were not true expressions of the views of the respective persons from whom said testimonials were obtained, and the only one of said persons who testified, namely, Nancy Palmer Christy, said that the statement or testimonial appearing in the aforesaid magazines over her signature was and is a correct statement of her views concerning the said Cutex preparations. The respondent discontinued the use of paid testimonials after May, 1930, and has used none since.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice and injury of the public and respondent's competitors, and are

unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, and briefs and argument of counsel in support of complaint and in opposition thereto and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, Northam Warren Corp., a corporation, its officers, representatives, agents, servants, and employees, cease and desist in connection with the sale and distribution of toilet articles and toilet preparations in interstate commerce—

From the use, or authorizing the use by others, in advertising or otherwise, of testimonials or indorsements of its toilet articles and toilet preparations, for which said testimonials and indorsements respondent has paid substantial sums of money, without disclosing the fact that respondent has paid substantial sums of money therefor.

It is further ordered, That the respondent, Northam Warren Corp., within 30 days after the date of service upon it of this order shall 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 hereinbefore set forth.

Complaint

15 F. T. C.

IN THE MATTER OF

C. ARLINGTON BARNES

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1981. Complaint, Oct. 20, 1931—Decision, Dec. 15, 1931*

Consent order requiring respondent individual to cease and desist from falsely representing, in connection with sale of jewelry made and dealt in by him, that he is a jewelry importer or importer of precious or semiprecious stones, or will give free, upon payment of 25 cents for packing and shipping charges, new ring in exchange for any made and sold by him and becoming defective, as specified, "unless and until a new ring is actually given free under such circumstances, the purchaser paying only the amount required for packing and shipping."

Mr. Robert H. Winn for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that C. Arlington Barnes, an individual, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual with his principal office and place of business in the city of Providence in the State of Rhode Island. He is and for more than one year last past has been engaged in manufacturing various articles of jewelry and offering for sale and selling the same by mail direct to purchasers thereof located in various States of the United States. He causes the said jewelry when sold to be transported from his place of business in the State of Rhode Island into and through other States of the United States to purchasers thereof located in a State or States of the United States other than the State of Rhode Island. In the course and conduct of his business respondent is in competition with other individuals and with corporations, firms, and partnerships engaged in the manufacture and in the sale and distribution of jewelry in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof the respondent has been and is now representing to purchasers and prospective purchasers of the jewelry manu-

factured and offered for sale and sold by him that he, the respondent, is an importer of precious and semiprecious stones. In truth and in fact the respondent is not an importer in that he does not import precious or semiprecious stones from any foreign country nor does he import any articles or material for use in manufacturing his jewelry from any foreign country. Respondent uses neither precious nor semiprecious stones in the course and conduct of his business of manufacturing jewelry.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof respondent incloses with each of certain rings manufactured by him and offered for sale and sold by him in interstate commerce copies of an alleged "Certificate of Guaranty." Respondent, by means of the certificate of guaranty, purports to guarantee the ring which it accompanies against defects or a loose setting for five years from date of purchase. Respondent, by means of the certificate of guaranty purports to offer a new ring free if the ring which accompanies the certificate of guaranty is defective in any way, or if the stone loosens or falls out. Respondent, by means of the certificate of guaranty purports to offer a new ring free under such circumstances when 25 cents is forwarded for postage and shipping charges by the purchaser of the defective ring, together with the defective ring. In truth and in fact the certificate of guaranty is not a guaranty at all and the ring offered in exchange for a defective ring is not offered free in that the 25 cents required for packing and shipping charges includes not only the cost of packing and shipping, but the cost to respondent of the new ring plus an amount not less than his ordinary profit.

PAR. 4. The acts and things done by the respondent as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the belief that certain of the jewelry manufactured by respondent and offered for sale and sold by him in interstate commerce is set with precious or semiprecious stones.

PAR. 5. The acts and things above alleged to be done by respondent as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the belief that the jewelry manufactured by respondent and offered for sale and sold by him in interstate commerce is guaranteed and will be replaced if defective on the payment of charges which represent the cost of packing and shipping only.

PAR. 6. The acts and things done by respondent as above set forth constitute practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c)

operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the jewelry business, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 20th day of October, 1931, issued its complaint against C. Arlington Barnes, an individual, respondent herein, and caused the same to be served upon said respondent as required by law, in which complaint it is alleged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On October 27, 1931, the respondent filed herein a formal written answer to said complaint. On November 11, 1931, the said respondent filed a second answer herein wherein he stated that he desired to waive hearing on the charges as set forth in the complaint and that he did not desire to contest the proceedings. He further stated in the said answer that he consented that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of law alleged in the complaint, all in accordance with the provision of section 2, Rule III, of the Rules of Practice and Procedure of the Federal Trade Commission, and the Commission having considered and accepted the last named answer in lieu of the former answer therefore filed, and being fully advised in the premises, states that the respondent, C. Arlington Barnes, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, C. Arlington Barnes, his agents, representatives, servants, and employees, cease and desist in connection with the offering for sale and sale in interstate commerce of jewelry—

(1) From representing that he is an importer unless and until he actually imports articles or materials for use in manufacturing his jewelry from some foreign country.

(2) From representing that he imports precious or semiprecious stones unless and until precious or semiprecious stones to be used by

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Order

him in manufacturing his jewelry are imported by him from some foreign country.

(3) From representing that he will give free a new ring in exchange for any ring manufactured and sold by him which becomes defective or in which the setting becomes loose within five years from the date of purchase upon the payment of 25 cents for packing and shipping charges, unless and until a new ring is actually given free under such circumstances, the purchaser paying only the amount required for packing and shipping of the new ring.

It is further ordered, That respondent, C. Arlington Barnes, shall within 30 days after the service upon him of a copy 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 hereinbefore set forth.

IN THE MATTER OF
MUTUAL PUBLISHING COMPANY ET AL.

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

Docket 1571. Complaint, Feb. 25, 1929—Decision, Dec. 18, 1931

Where two corporations under common ownership and management, and three individuals, owners, officers, and operators thereof; in carrying on, directly and through agents acting under said individuals' instructions, sale of a four volume cyclopedia, and ten-year loose leaf extension service, and in soliciting teacher prospects, whom they or their agents approached on some such false basis as having been sent by teacher's superintendent or as occupying some official position or as in a position to render or secure some official service or benefit, or as offering books necessary for teacher prospect's continuance of her position,

- (a) Falsely represented that a four volume cyclopedia was being given away as part of an advertising plan, or in consideration of recommendation to be given, or by reason of selection of particular prospect as recipient of such a gift, and that only charge was for the recommended, ten-year loose leaf extension supplement, payable at special rate or price of \$3.95 a year, and contract for which was revocable at will by subscriber, facts being contract was not revocable, and regular payment of \$39.50 thereunder for set and supplement in ten monthly installments was insisted on, and there were additional charges, frequently concealed, for postage, expressage, and binders, and through use of aforesaid, so-called "give away" method misled many purchasers;
- (b) Falsely represented that certain well known and eminent educators, authors, public officials, surgeons, and explorers were editors, associate editors, contributors to or otherwise connected with aforesaid publications, and that said cyclopedia was the latest reference work, kept always up to date by said extension service;
- (c) Represented through order forms employed that the bindings were "full seal Levant fabricoid" and through agents' representations and use of flexible leather prospectuses lead purchasers to believe that bindings of the books would be flexible leather, facts being said bindings were not that large grained, highly prized variety of Morocco leather implied by word "Levant," but were a nonflexible fabric covered paste board substance, and sets frequently were noticeably inferior in contents and illustrations to those represented by prospectus;
- (d) Falsely represented through such words upon their contract and note forms as "special introductory contract to teachers," "special introductory offer," and directly, that regular price of \$39.50 constituted a special price extended to particular teacher solicited, in consideration of her anticipated recommendation, and that price would later be much higher;
- (e) Represented that a member of the particular city school board, whose teachers were being solicited, or their principal, superintendent, super-

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visor, member of the school board or state superintendent had recommended the publications, facts being that city school board concerned had warned principals and superintendents not to give such recommendations, state superintendent thus referred to had particularly instructed and warned all county superintendents against alleged fraudulent conduct on part of agents of said corporations in posing as representatives of his department, and claimed recommendations were false;

- (f) Falsely represented to prospective teacher customers or subscribers that the contract and promissory note forms presented for their signature constituted a mere memorandum, receipt or other informal paper, and thereby and through distracting their attention, preventing a reading thereof, or concealing contents or other trickery and chicanery secured their signatures thereto, and declined to respect subsequent protests and notices of misrepresentation and fraud, together with return of the books, on the ground that the notes in question had passed out of their hands into those of a corporate innocent purchaser for value, facts being corporation thus referred to was formed, controlled, owned and operated by them for express purpose of holding and collecting such notes; and
- (g) Represented that sets sold by them under a different name, but with same content constituted a different publication, with effect of misleading and deceiving purchasing public into erroneous belief that in buying said sets under a different title they were purchasing an entirely different publication or reference work; and

Where corporation last referred to, thus owned, controlled, and operated, the president thereof, an active participant in aforesaid various transactions, and the secretary-treasurer, who knew or should have known thereof, impugned the honesty of protesting teacher purchasers, whom it threatened with injurious publicity, credit injury, and embarrassment, and sought to and did collect in the guise of an innocent purchaser for value accounts obtained by fraud and come into its possession as aforesaid;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of the publications in question, and with tendency to injure competitors substantially by unfairly diverting trade from such competitors to themselves;

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

Mr. PGad B. Morehouse for the Commission.

Mr. J. B. McGilvray, of Kansas City, Mo., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Mutual Publishing Co., respondent Publishers Acceptance Corporation, and respondent Educators Service Association, Missouri corporations with their office and principal place of business in Kansas City, and respondent individuals, officers of the aforesaid

corporations,¹ engaged in the case of respondents Mutual Publishing Co. and Educators Service Association in the sale of certain cyclopedias or reference books, and/or so-called loose-leaf extension service, and, in the case of said Publishers Acceptance Corp., in the collection of notes and accounts from individuals and concerns in various States, with misrepresenting business affiliations, and nature and prices of product or service, and terms and conditions of sale thereof and identity of product, claiming indorsements wrongfully, simulating trade name of competitive product, offering product falsely as free, securing customers' signatures fraudulently to contract or note, and enforcing or coercing payment claimed, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents Mutual Publishing Co. and Educators Service Association, and respondent officers thereof, Shelton, Bufton, and Thomas, made false, deceptive, and fraudulent sales talks or representations in connection with the sale of the foregoing, falsely representing the same as the latest reference works and as kept up to date by the loose-leaf services, edited or contributed to by well-known educators, authors, executives and public officials, bound in leather, with print and paper of the highest quality, and offered at special introductory prices lower than the regular prices.

Said respondents further falsely represented, as charged, that the cyclopedias were being given away, that the only charge was for the loose-leaf service, that there was no further charge for postage or expressage on either, that the work or services could be paid for in ten annual installments of \$3.95 each, and/or that the contract was contingent upon the subscriber's teaching school, or could be canceled at will, that certain persons had given recommendations and/or that recommendations secured by trickery or fraud, were bona fide, that the subscriber was signing a memorandum or informal paper and not a contract or note, that copies of the cyclopedia were being given to those who refused to pay for the loose-leaf service, that the

¹ The complaint sets forth the respondents as follows:

Mutual Publishing Co., a Missouri corporation with office and principal place of business at No. 1113 McGee Street, Kansas City, Mo.

C. J. Shelton and H. A. Bufton, respectively for several years last past president and secretary and treasurer of Mutual Publishing Co.

Publishers Acceptance Corporation, a Missouri corporation with office and principal place of business at No. 1113 McGee Street, Kansas City,

P. I. Neergaard, T. E. Thompson, and Carl Critzinger, respectively for more than one year last past president, secretary, and treasurer of Publishers Acceptance Corporation.

Educators Service Association, a Missouri corporation with office and principal place of business at No. 1113 McGee Street, Kansas City.

A. C. Thomas and H. A. Bufton, respectively, for several years last past president and secretary and treasurer of Educators Service Association.

contracts or notes were obtained without misrepresentation or fraud and would be sued on unless the subscriber made the payments demanded, that respondent Publishers Acceptance Corporation was an innocent purchaser for value, that date of publication or printing appearing in said Bufton's Universal Cyclopeda was the date of first printing, that an agency or agent used to coerce payments from subscribers was a bona fide collection agency, and/or that suits would be instituted or action taken should the subscribers fail to pay the amounts in their contracts or promissory notes.

Respondents Publishers Acceptance Corporation and respondents Neergaard, Thompson, and Critzinger, officers thereof, as charged, in collecting notes or obligations arising from contracts or purchase for or on behalf of respondent Mutual Publishing Co., made false, misleading, and deceptive statements to the makers of such notes or contracts, namely, that respondents Publishers Acceptance Corporation was an innocent purchaser for value of said notes or contracts, that unless subscribers paid it the amounts called for at the specified time, suits would be brought to enforce payment, that said corporation had paid cash for said notes, was an innocent purchaser thereof, that the notes were not subject to cancellation, and that the corporation was a note broker, purchaser of notes, and a collector.

Respondent Mutual Publishing Co. and respondents Shelton, Bufton, and Thomas and their employees, as charged, falsely and fraudulently represented the usual selling prices of the books and publications as certain fictitious and exaggerated amounts far exceeding their usual and customary prices at which they sold or which they expected to sell the same, and greatly in excess of the value of the same, and obtained signatures of persons to orders or contracts of purchase "by subterfuge, tricks or artifices, such as inducing such persons, under pretense of obtaining their names and addresses for other purposes, to write their names and addresses on said order blanks or contracts, knowing that said persons had no knowledge that they were at the time signing any obligation or entering into a contractual relation."

Respondents Mutual Publishing Co. and Educator Service Association, and respondents Shelton, Thomas, and Bufton, as charged, sold the public as " 'Home Library of Knowledge' the same set of books that they sell to the public as 'Bufton's Universal Cyclopeda,' thereby misleading and deceiving the purchasing public into the erroneous belief that they are purchasing entirely different publications or reference works," and also sold a set of reference works "under the name of 'International Reference Works,' published by the

Holt's Publishing Co., and the purchasing public has been misled and deceived into purchasing said 'International Reference Works' from said respondents under the erroneous impression and in the belief that they were purchasing the well-known and reputable 'International Encyclopedia.' "

"The acts and things above alleged to have been done by respondents are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above respondents charging them and each of them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents having appeared and answered, evidence was introduced in support of the complaint and on behalf of the respondents before a trial examiner of the Commission duly appointed for that purpose. Whereupon this proceeding came on for final hearing before the Federal Trade Commission upon the record and briefs, oral argument being waived. The Commission having duly considered the same and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Mutual Publishing Co., is a corporation organized under the laws of the State of Missouri in the year 1922, having its office and principal place of business in Kansas City, Mo. Prior to 1922 the respondents H. A. Bufton and C. J. Shelton operated as a partnership under the name and style of the Mutual Publishing Co., and while so operating sold a set of books known as Bufton's Universal Cyclopeda, which work they purchased from the Bufton Publishing Co. Upon incorporation the stock of the Mutual Publishing Co. was owned by H. A. Bufton, Charles J. Shelton, and James D. Bufton, each owning approximately one-third of the stock. On the first day of May, 1928, pursuant to a contract theretofore entered into between the Bufton and the Mutual Publishing companies, the copyrighted plates, from which the encyclopedias were printed, became the property of the Mutual Publishing Co., Inc., and were thereafter sold to H. A. Bufton and

C. J. Shelton, the present owners. Until January, 1928, C. J. Shelton was president and H. A. Bufton, secretary and treasurer of the Mutual Publishing Co., after which they exchanged these offices. The capital stock of the company is owned or controlled in its entirety by H. A. Bufton and C. J. Shelton.

The respondent Publishers Acceptance Corp. was organized by respondents P. I. Neergaard, T. E. Thompson, and Carl Kretzinger under the laws of Missouri in 1926 or 1927, and until about August, 1930, had its offices and principal place of business in the same suite of offices as the Mutual Publishing Co., and thereafter in the same building with the latter company at a new address in Kansas City. Its capital stock was \$5,000, represented by 100 shares. Paul I. Neergaard was president; respondent T. E. Thompson, secretary-treasurer. It was a creature of and controlled by H. A. Bufton and C. J. Shelton, who became owners of all of the stock and so continued until about January 9, 1929, when they transferred it all to the Mutual Publishing Co., Inc. The only purpose and function of the Publishers Acceptance Corp. was to purchase at a discount from the Mutual Publishing Co. and collect the notes and obligations alleged to be due that company from the purchasers of books.

The respondent Educators Service Association is a corporation organized under the laws of Missouri in 1925, and J. D. Bufton, H. A. Bufton, C. J. Shelton, and a man named Butterworth. Butterworth disposed of his interest to the other three, and about 1926 respondent A. C. Thomas purchased a third of the entire issue and became president with C. J. Shelton as vice president and H. A. Bufton as secretary-treasurer. About September, 1930, H. A. Bufton and C. J. Shelton purchased Thomas's interest and now own all of the stock in said association. Until August, 1930, its principal place of business was in the same suite of offices as the Mutual Publishing Co. and the Publishers Acceptance Corp. and thereafter in the same building with those companies at a new address. This association originally was incorporated to handle separate publications, but discontinued that about 1928 and started to sell a set of books called Library of Knowledge of the same contents as Bufton's Universal Cyclopaedia. Such set was still being sold by it as late as September, 1930.

All three of the respondent corporations hereinabove described were and are actively conducted, managed, and controlled as a unit by respondents H. A. Bufton and C. J. Shelton personally from one suite of offices with one set of employees, and for one ultimate purpose, to wit, the sale of books. Prior to 1928 the Educators Service

Findings

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Association sold the International Reference Work; the respondent Mutual Publishing Co., formerly sold the books called Home Library of Knowledge, which was a two-volume set of books. At the time of the hearings herein held respondents H. A. Bufton and C. J. Shelton were operating through the medium of a company known as The Teachers Supply Co., selling both Library of Knowledge and Bufton's Universal Cyclopeda.

PAR. 2. The respondents H. A. Bufton, C. J. Shelton, Mutual Publishing Co., Educators Service Association, and Publishers Acceptance Corp. are now and for many years past have been cooperatively engaged in the sale and distribution of books styled Bufton's Universal Cyclopeda, together with Bufton's Loose-Leaf Extension Service, a Home and School Personal Service Bureau privilege and Library of Knowledge to persons, firms, or corporations located in various States of the United States and cause said books and service to be transported from the State of Missouri through and into States of the United States other than the State of Missouri and when there sold are delivered to the purchasers thereof. The respondent A. C. Thomas, from 1926 to September, 1930, was likewise in the same manner engaged.

In the course and conduct of their business as aforesaid all of the respondents are now and have been for many years past in competition with other individuals, partnerships, firms, or corporations also engaged in the sale and distribution of encyclopedias and other books of reference and loose-leaf extension services. The testimony of one competitor, a Mr. Nichols, who publishes and sells in interstate commerce Teachers Extension, a set of books for school teachers sold by agents traveling in all parts of the United States shows that respondents' sales methods hereinafter described injuriously affected his business. Such methods resulted in his being unable to make sales in one instance for a period of three days, and in another instance he was unable to sell any of his books, particularly by reason of the method used by the Mutual Publishing Co.'s agents known and hereinafter described as the "Give-away" method. His testimony shows that the same condition existed in Texas and in Missouri as well as Kansas.

Mr. Harold M. Stanford, president of the Stanford Education Society of Chicago, Ill., is another competitor of respondents who testified as to the fact of his competition.

PAR. 3. The evidence as to false and misleading representations of these respondents relates solely to the sale of Bufton's Universal Cyclopeda bound in four volumes and Bufton's Loose-Leaf Extension Service alleged to keep the encyclopedias up to date. Such service extends over a period of ten years from the year of purchase.

To make these sales respondents employ agents upon a commission basis who travel from State to State, and by personal solicitation of prospective purchasers endeavor to and do obtain orders for the encyclopedia and the cumulative loose-leaf supplement.

The testimony of about 36 witnesses who were teachers, superintendents, and principals of public schools in the States of Indiana, North Dakota, Nebraska, Kansas, Minnesota, and Missouri, proves the sales methods hereinafter described to have been used by seven different agents and by two of the officers and stockholders of the corporate respondents, namely, C. J. Shelton, acting as both instructor and salesman and A. C. Thomas.

The sales methods used were similar, according to the evidence in the case of most of the teachers. The agent was instructed to, and did go to the county superintendent or some official in charge of the schools in the particular area of solicitation and obtained the names and addresses of teacher prospects. Upon interview, the agent represented that he had been sent to her by her superintendent, principal, supervisor, or county superintendent; that the prospect had been selected to receive a free set of up-to-date encyclopedias because her opinion of them would carry weight in the community; that later a sales campaign would be put on; that numerous agents would then canvass that city intensively, using her recommendation and the testimonials of other teachers so selected; that he, the agent, only wished the teacher to inspect the set of books and write such a letter of recommendation. A prospectus was then exhibited which is in evidence herein as Commission's Exhibit 22.¹ The binding was flexible leather material and it contained many beautiful full-page illustrations, together with a vast amount of teaching material. Often the agent told the prospect that she could not teach school any longer without this set of books. In many cases the agents so conducted themselves as to give the teacher the impression that they were school inspectors or had some official connection with her school. In one instance, an agent named Smith falsely represented to a teacher that he was the author of Wentworth-Smith's Arithmetic, that he had been a teacher of "Charlie" who was Charles A. Lee, State superintendent of schools, and that he would use his influence with "Charlie" to see that the teacher, who was in a flood-stricken area of southeastern Missouri, would receive an appropriation promptly for the erection of a new schoolhouse. This and similar conversations were carried on by agents, usually while the teacher was endeavoring to occupy the attention of and preserve order among from 12 to 36 children.

¹ Exhibits not published.

By means of these false and misleading statements the agents persuaded teacher prospects to accept the four volumes of Bufton's Universal Cyclopedias as a gift. Thereupon, the agents suggested the advisability of keeping the said books up to date by means of the annual loose-leaf supplement. The prospects were told that it was not necessary for them to take it, but that it was a special introductory price to them, and later would be much higher, whereas if they took it now it would only cost them \$3.95 per year for ten years. Then the agents presented the form of contract or note furnished them by the corporate respondents and obtained the teacher prospect's signature upon whatever misrepresentations the case seemed to require, such as, that it was merely a memorandum to show the company that he had delivered the gift; or that if after the teacher had examined the books she should change her mind, lose her position, or for any other reason should not want to continue the subscription to the supplements, she could tear up her copy or write the company a letter and the matter would be at an end. In no case presented by the record did the teacher understand that the cyclopedias were anything but a gift. In almost all of the cases the teachers had not been informed that there were extra charges in addition to the \$39.50 to cover transportation of the loose-leaf cumulative supplements and an extra charge for binders. Usually the salesman made a forthwith and unexpected delivery of the four volumes and departed.

The contracts were not cancelable at will, were payable in full within one year from the date signed and provided for payment for the books which had been represented to the teachers as gifts. Such contracts also contained a provision that "my county superintendent did not send your representative to call on me" in black small type under the superimposed large red type "(10) year's service," and in all cases after 1926 the paper signed was a promissory note. Upon further examination of the contract or note the customers in a great many cases returned the books to Kansas City with written notices to the effect that the contract or note had been procured by fraud and misrepresentation of the soliciting agent. Also, in many cases, a comparison of the books themselves with the salesman's oral representations and the flexible leather-bound prospectus led the purchasers to the same action. In many instances the contents and illustrations in the books were noticeably inferior to those represented by the prospectus.

PAR. 4. Respondents, within a short period of time, usually about a week, transferred the contracts or notes so obtained over to the respondent Publishers Acceptance Corp., which paid for them with

funds under the joint control of respondents Bufton, Shelton, and Thompson, by checks signed by any two of those individuals. This corporation was the medium through which respondents endeavored to and did collect from the purchasers under the guise of an innocent holder in due course, accounts which had been fraudulently obtained. This association, after being informed of the misrepresentation that the various agents of the Mutual Publishing Co. had made, continued to dun the purchasers. In one case it expressed itself to the complaining purchaser as follows:

Note you state the books were sold to you under false pretenses. Of course, that is the usual cry whenever a teacher wants to repudiate her debt, but we never believe anything of that kind.

and in many cases by repeated letters impugned the honesty of teacher purchasers and threatened them with injurious publicity, injury to their credit, and embarrassment among their friends and neighbors.

PAR. 5. The Commission finds from the evidence that the respondents C. J. Shelton, H. A. Bufton, A. C. Thomas, P. I. Neergaard, and T. E. Thompson, actively participated in, approved, and benefited by the sales methods complained of herein.

H. A. Bufton owns practically half of the stock, is an officer in, and controls and personally manages the Mutual Publishing Co. This company owns all of the stock in Publishers Acceptance Corp. Together with his co-officer C. J. Shelton, Mr. Bufton has been receiving and handling the notes obtained by the fraudulent sales methods through the medium of the Publishers Acceptance Corp., incorporated for that purpose, and operating with the same employees in the same office. Mr. A. C. Thomas, salesman of the Mutual Publishing Co. and the Educators Service Association, one-time vice president of the Mutual Publishing Co. and a pupil of C. J. Shelton, testified that it was impossible to differentiate between those two companies. The identity and mutuality of interests is typified by one instance of record where, on receiving complaints of misrepresentations and fraud in connection with the sale of books to one Miss Allison, Mr. Bufton advised her as follows on the stationery of the Educators Service Association:

Your note given in payment of Bufton's Universal Cyclopaedia has been sold to the Publishers Acceptance Association of this city and therefore we have no further interest or authority concerning same.

Respondent C. J. Shelton instructed other officers and salesmen in some of the methods complained of and was identified by one witness as the man who had sold books to her upon misrepresentation,

and partially identified by another witness. He was president of the Mutual Publishing Co. between May 18, 1927, and June 18, 1928, his counter signature was required, he was in joint control of the funds in bank with which the Publishers Acceptance Corp. purchased the Mutual Publishing Co.'s notes, he personally dictated collection letters, was one of the incorporators of the Mutual Publishing Co. and received and handled the notes, was co-author with H. A. Bufton of instructions to salesmen and together with respondent Bufton personally owns the plates and copyrights from which the encyclopedia is printed. Further, he personally acted as salesman for the Mutual Publishing Co. in Kansas and Missouri.

Until respondent Thomas's relinquishment of his interest in the Educators Service Association in September, 1930, as aforesaid, this respondent was actively in charge of that association and also acted as salesman for the Mutual Publishing Co., and otherwise directly and personally participated in the cooperative efforts of all these respondents other than as a stockholder. Respondent P. I. Neergaard is the editor of the loose-leaf extension service, is now an employee of the Teachers Supply Co., editing the same publication as Bufton's Universal Cyclopeda, was president of the Publishers Acceptance Corp., personally dictated and wrote collection letters, and otherwise actively participated in the cooperative affairs of these respondents.

Respondent T. E. Thompson is no longer connected with these companies, but he was secretary-treasurer of the Publishers Acceptance Corp. and with the aid of the Mutual Publishing Co.'s stenographer dictated and caused to be written various letters to purchasers who had informed the Mutual Publishing Co. that the books were sold them under false representations, representing that the Publishers Acceptance Corp. was an innocent purchaser for value, when he knew, or should have known, that such was not the case. There is nothing to indicate that this respondent may not again associate himself with the other respondents in the same activities.

Mr. Carl Kretsinger, one of the respondents charged in the complaint, is an attorney engaged in private practice in Kansas City who was one of the incorporators of the Publishers Acceptance Corp. and originally held ten shares of stock in that company. The Commission finds that there is no evidence of record sufficient to justify issuing an order against Mr. Kretsinger, who does not appear to have rendered any services since the incorporation.

PAR. 6. Respondents Mutual Publishing Co., Educators Service Association, C. J. Shelton, H. A. Bufton, and A. C. Thomas and their authorized agents, representatives, employees, and salesmen in connection with the interstate sale of Bufton's Universal Cyclopeda and the loose-leaf cumulative supplement thereto have falsely

represented that certain well-known and prominent educators, authors and public officials were editors or assistant editors of, contributors to, or otherwise connected with the said publication. Some of the representations were that certain eminent educators, surgeons, and explorers, were contributing authors. Respondent A. C. Thomas told one teacher that the editor of the Encyclopedia Britannica was a contributor and that one famous explorer, now deceased, had received \$80,000 from respondents for material to be contributed by him, none of which had any basis of fact.

The respondents aforesaid also falsely represented to purchasers and prospective purchasers that Bufton's Universal Cyclopedia was the latest reference work and that the loose-leaf extension service always kept it up-to-date. A comparison of the 1924 and 1927 articles on aviation and aeroplanes in these books, which are in evidence, shows the falsity of that representation. Volume 4 of the 1927 edition (Commission's Exhibit 93-c) contains an article entitled "United States," showing comparative tables of metal production sales up to 1923, of principal crops as late as 1924, and concludes said article with the election of Mr. Coolidge in 1924, and the statement that in 1925 the United States became a member of the World Court. The Commission finds from all the evidence that at the time these representations were made the aforesaid publication was not the latest reference work. Examination of the pages containing the articles on Austria and Austria-Hungary shows that the identical plates were used to print it in 1927 as were used to print the 1924 edition.

PAR. 7. The form illustrated by Commission's Exhibit 9 upon which the orders were taken represented the bindings as Full Seal Levant Fabricoid. Levant is defined by Webster as being Levant Morocco, a large grained variety of morocco leather highly prized for bookbinding. These forms were the forms authorized and distributed to the agents by the corporate and individual respondents aforesaid. The evidence shows that these agents represented and the prospects believed that these books would be bound in leather and that such representation was false. From the use of the flexible leather prospectus and express oral representations by the agents, many prospects were led to believe that the leather bindings of the books would be flexible, whereas as a matter of fact, the bindings were of a fabric-covered pasteboard substance and not flexible.

PAR. 8. The contracts by the aforesaid respondents used prior to 1926 such as Commission's Exhibit 8, had printed conspicuously in red ink across the top margin thereof the words "special introductory contract to teachers." After 1926 a note form was used which had attached a duplicate to be torn off by the agent, to be left

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with the purchaser. On the back of the said duplicates were printed in large black type the words "special introductory offer." The evidence shows that this, as well as the representations of the agents to the same effect, were false and that the same terms were made to everyone, namely, \$39.50 complete, except for the de luxe binding, which was \$49.50. Sometimes the agents represented that the price would later be as high as \$65 and that the teachers were being given this special price because of their expected recommendation, which was also untrue.

PAR. 9. The aforesaid respondents and their agents aforesaid represented that the four volumes of Bufton's Universal Cyclopedia were being given away as part of an advertising plan or for recommendations by the purchasers, or by reason of the purchaser having been specially selected to receive such a gift. These statements were false. The books and the extension service were sold and there were further charges for postage, expressage and binders, which further charges in many instances were concealed from the prospective purchaser by the sales agent. This method was known by the companies and respondents as the "give-away" method and was the ordinary and usual sales method adopted. This method resulted in the deception of the great majority of the purchasers who testified.

PAR. 10. The Commission finds that the respondents last aforesaid represented, in order to obtain the subscriber's signature, that the cumulative loose-leaf extension supplement could be paid for at the rate of \$3.95 per year, when as a matter of fact the contract to which the signature was obtained required payment of the entire amount in about ten months. They also represented that the subscriber would be free to cancel the contract at will, when in truth and in fact such was not the case, and after having obtained the contracts and placed them in the hands of the respondent Publishers Acceptance Corp., respondents would insist upon prompt payment in accordance with the specific provisions and terms of the contract and contrary to their representations made by their agents as aforesaid.

PAR. 11. The Commission finds no evidence in the record in support of the charge contained in subparagraph (g) of paragraph 3 of the complaint, namely, that certain recommendations of the encyclopedia secured by trickery or fraud were bona fide recommendations. The evidence does show that in many cases the agents represented to prospects that recommendations had been given, when in truth and in fact such recommendations had not been given. The Minneapolis school teachers were told that a member of the Minneapolis school board had specially recommended the books, when such was not the fact, and the school board of that city had warned all the principals and superintendents not to give recommendations

of that sort, but nevertheless A. C. Thomas acting on behalf of the aforesaid respondents represented to many of those purchasers that their principal or superintendent or the member of the school board aforesaid had recommended that the books should be purchased. It was represented in one instance, that the State superintendent of Missouri had recommended the books, when not only had he not recommended them, but had particularly instructed all county superintendents, warning them particularly against alleged fraudulent conduct on the part of the respondents' agents, posing as representatives from his department.

PAR. 12. The respondents last aforesaid and their agents falsely represented to purchasers and prospective purchasers that the paper being signed was a memorandum of the receipt of a gift or some other informal paper. A Miss Loretta Fordyce testified that she didn't look it over because the agent was "quick and fast and when I started to look at it he called my attention to something else that he would show me." Miss Esther Arne testified respondents' agent said that "In signing this it is only an acceptance of the gift and the service which does not concern you at all" (pointing to something in the printing). Miss Violet Heffelfinger testified:

A. I didn't know it was a note at that time.

Q. What did you think it was, a receipt?

A. It was a receipt for the books he was leaving in my school.

Miss Kathleen Craft was told by one of respondents' agents to please sign that to show that the books were left in her presence, and she also testified that while that was her signature on her note, it must have been covered with another piece of paper when she signed it, as there was nothing written on the piece of paper she signed except something she had had read to her before and that was not it. Florence Kathleen Most testified:

He gave me a slip of paper and stated that that was a memorandum showing that he had presented me with a set of books * * * I don't remember what a memorandum looked like, but I read it over and couldn't see that it was any form of note. He said it was a memorandum showing that he had presented me with a set of books and to sign my name, so I did.

These respondents also represented in this connection that copies of the encyclopedia were being given away by respondents to teachers who refused to take and pay for the supplement, when as a matter of fact such statement was untrue.

PAR. 13. Respondents aforesaid and their agents knowingly and falsely represented that the Publishers Acceptance Corp. was an innocent purchaser for value of the subscribers' negotiable paper after being informed of the fraud of their agents. Through the medium of the Publishers Acceptance Corp. as well, they claimed lack

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of all knowledge of their own agents' acts and sought and obtained the benefits therefrom, posing as holders in due course. The notes were purchased at a discount of from 15 per cent to 33 per cent within a short space of time and paid for by checks which had to be countersigned either by Mr. Bufton or Mr. Shelton, officers of Mutual Publishing Co. The Commission finds that these corporate and individual respondents collaborated actively to ratify and to derive the benefits accruing from the misrepresentations made by the Mutual Publishing Co.'s agents, and that the Publishers Acceptance Corp. was not in any case an innocent purchaser for value of the customers' contracts of purchase or promissory notes.

PAR. 14. The Commission finds that the respondents last aforesaid, by means of adopting and using a different title, such as Library of Knowledge, covering a set of books of substantially the same content as Bufton's Universal Cyclopedia, are misleading and deceiving the purchasing public into the erroneous belief that in purchasing said set of books of a different title they are purchasing entirely different publications or reference works, when in truth and in fact such is not the case.

PAR. 15. The evidence shows that the respondents Publishers Acceptance Corp., a corporation, P. I. Neergaard and T. E. Thompson and the agents, representatives, servants, and employees of them and each of them in connection with the collection of notes or other obligations arising from sales covering interstate shipments of books for and on behalf of the other respondents, falsely represented to the purchasers of said books that the said notes or obligations were held by the Publishers Acceptance Corp. as a bona fide holder in due course, when in truth and in fact the said notes and obligations were held by the Publishers Acceptance Corp. as the agent of the Mutual Publishing Co. for collection and as transferee, its interests therein were identical with the interests of the other respondents.

PAR. 16. The foregoing acts, practices, representations, and each of them made and done by the respondents and each of them have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' books, and have a tendency to injure, to a substantial extent, competitors of respondents by unfairly diverting trade from such competitors to the respondents.

CONCLUSION

The acts and practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors; are unfair methods of competition in commerce, and constitute a violation of section

5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony taken, and briefs of counsel for the Commission and counsel for the respondent, and both sides having waived oral argument, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondents Mutual Publishing Co., a corporation, Educators Service Association, a corporation, C. J. Shelton, H. A. Bufton, and A. C. Thomas, individual respondent, and the agents, representatives, servants, and employees of each of them, in connection with the sale and distribution in interstate commerce of Bufton's Universal Cyclopedia, loose-leaf cumulative supplements thereto, or other books or publications under whatsoever title, do cease and desist from directly or indirectly representing to customers or prospective customers:

(a) That any educators, authors, or public officials are editors, contributors, or otherwise connected with said books or publications unless and until such persons actually shall have contributed articles thereto, or shall actually become associated with the respondents in connection with such books or publications.

(b) That the publication Bufton's Universal Cyclopedia, under whatsoever name distributed and sold, is the latest reference work, unless and until the same shall have been revised and brought up to date.

(c) That the bindings of said books are flexible or seal Levant or in any other way representing that said bindings are composed of leather when such is not the fact.

(d) That the usual and customary selling price of the books and the extension service or cumulative supplement is a special or introductory price, when such is not the fact.

(e) That the books are being given away and that the only charge is for the loose-leaf extension service, when such is not the case, and that there is no further charge for postage or expressage on said books unless and until such transportation charges are paid by the respondents.

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(f) That the cumulative loose-leaf extension supplement can be paid for at a certain rate per year, the subscriber being free to cancel the subscription at will, when those are not the terms of the obligation to which the subscriber's signature is procured.

(g) That said books have any endorsements or recommendations of superintendents of education or others, unless and until such endorsements and recommendations have actually been obtained.

(h) That the prospective customer or subscriber is signing a memorandum, receipt, or other informal paper when in fact the paper being signed is a promissory note or a contract of purchase.

(i) That the Publishers Acceptance Corp. is an innocent purchaser for value of subscribers' contracts of purchase or promissory notes or that any other company or individual is a bona fide holder in due course of customers' negotiable instruments when such is not the case.

(j) That any books or publications with the same or substantially the same contents as Bufton's Universal Encyclopedia are other books or publications than Bufton's Universal Encyclopedia.

And it is further ordered, That the respondents, Publishers Acceptance Corp., a corporation, P. I. Neergaard and T. E. Thompson, and the agents, representatives, servants, and employees of them and each of them, in connection with the collection of notes or obligations arising from contracts of purchase covering interstate shipments of books for and on behalf of the respondents Mutual Publishing Co. or Educators Service Association, do cease and desist from directly or indirectly representing that the Publishers Acceptance Corp. is a bona fide holder in due course of the subscribers' negotiable paper, when such is not the case.

It is further ordered, That the said complaint be, and the same is hereby dismissed as to the charges contained in subparagraphs (j), (l) and (m) of said paragraph 3; as to subparagraphs (b) and (d) of paragraph 4, and as to the second paragraph of paragraph 6.

It is further ordered, That the complaint be, and hereby is dismissed as to the respondent Carl Kretsinger, erroneously spelled Critzinger in the complaint.

And it is further ordered, That the respondents and each of them, except Carl Kretsinger, within 60 days after service upon them of a copy of this order shall file with the Commission a report in writing setting forth in detail the manner and form of their compliance therewith.

Complaint

IN THE MATTER OF

BAILEY RADIUM LABORATORIES, INC., ET AL.

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

Docket 1756. Complaint, Feb. 5, 1930—Decision, Dec. 19, 1931

Order requiring respondent corporation, and respondent individual, its president, treasurer, and principal stockholder, to cease and desist, in connection with sale in interstate commerce of their radioactive water, "Radithor," as in said order in detail set forth, from—

- (1) Falsely representing development of said product as the outstanding achievement in application of radioactive rays, the circumstances leading to the production thereof, the safety, healing, and beneficial qualities thereof, and conditions or symptoms ameliorated thereby;
- (2) Publishing or causing to be published and distributed statements of physicians as to (a) therapeutic value of radioactive therapy, not specifically applicable to radithor, unless specifically and plainly so stated and published, or (b) therapeutic value of radithor, unless and until said statements based on physician's clinical experience in connection with the use thereof;
- (3) Publishing or causing to be published or distributed books, leaflets, booklets, or other publications advertising their said products in question, but written or prepared by a person or persons other than those held out therein as the authors thereof; and
- (4) Using corporate name Bailey Radium Laboratories, Inc., or otherwise representing that their aforesaid product is made by them in a laboratory.

Mr. Robert H. Winn for the Commission.

Hulbert & Heermance, of New York City, for respondents.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission charges that Bailey Radium Laboratories, Inc., and William J. A. Bailey, individually and as president and as treasurer and as principal owner of the stock of respondent Bailey Radium Laboratories, Inc., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Bailey Radium Laboratories, Inc., is a

corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in the city of East Orange in said State. Respondent Bailey Radium Laboratories, Inc., is and has been for more than one year last past engaged in the manufacture, fabrication, or preparation of a certain medical preparation or compound for internal use by human beings, the same being a solution composed of water and radium salt and/or mesothorium salt and in the sale of said preparation or compound under the trade name of Radithor direct to purchasers thereof located in various States of the United States. Respondent Bailey Radium Laboratories, Inc., causes its said preparation or compound when so sold to be transported from its said place of business in the State of New Jersey or from other States of the United States into and through other States of the United States to the purchasers thereof located in a State or States of the United States other than the State of origin of such shipment. In the course and conduct of its said business respondent, Bailey Radium Laboratories, Inc., is in competition with other corporations, partnerships and individuals engaged in the sale and distribution of preparations or compounds in commerce between and among various States of the United States, which preparations and compounds sold and distributed by such competitors are to be used for a purpose or purposes similar to that purpose or those purposes for which Radithor is to be used. Respondent William J. A. Bailey is now and for more than one year last past has been president, treasurer, and principal owner of the capital stock of the respondent Bailey Radium Laboratories, Inc.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof respondent Bailey Radium Laboratories, Inc., in order to aid the sale of said compound or preparations, has caused to be published certain books, leaflets, booklets, circulars, and other similar publications and has distributed the said books, leaflets, booklets, circulars, and other publications throughout various States of the United States in which said books, leaflets, booklets, circulars, and other publications respondent William J. A. Bailey as author, and/or respondent Bailey Radium Laboratories, Inc., as publishers have made false and misleading statements and representations, among them being such assertions as the following:

1. "The outstanding achievement in the application of radioactive rays has been the development of Radithor." "This is Radithor, the climax of thirty years of toil by hundreds of scientists who labored with invisible rays that the cause of humanity might be served." In truth and in fact the development of Radithor has not been the out-

standing achievement in the application of radioactive rays nor is Radithor the climax of thirty years of toil by hundreds of scientists who labored with invisible rays that the cause of humanity might be served.

2. And such other assertions as the following: "There are three chief rays—the alpha, beta, and gamma (of radium). The gamma ray is the most penetrating and is destructive. Hence it is used in cancer. The alpha ray is not penetrating and is not destructive. In fact, it is the most valuable of the three rays. According to Mme. Curie, 90 per cent of the total energy of radioactivity is due to the alpha ray. It is this ray that we get largely in Radithor." In truth and in fact when radium or mesothorium are taken into the body through the mouth, the alpha ray is destructive and poisonous and causes serious diseases in various portions of the body.

3. In the booklet "Radithor," published by respondent Bailey Radium Laboratories, Inc., bearing copyright notice indicating that the publication had been copyrighted by respondent Bailey Radium Laboratories, Inc., there are published excerpts from statements of various physicians as to the therapeutic value of radioactive therapy, all alleged to be based on clinical records, which excerpts import or imply that the said therapeutic value is obtained by the use of Radithor. Many of these reports are not based on physicians' experiences resulting from the use of any radioactive water and many others are based upon the use of a radioactive water other than Radithor. Other portions of the so-called "medical evidence" as contained in the alleged clinical reports contain statements to the effect that various diseases and unhealthy conditions have responded favorably to Radithor or that Radithor has been used successfully in such cases when in truth and in fact such conditions have not been successfully treated with Radithor nor have such conditions responded favorably to Radithor as a result of any treatments with Radithor given by the doctor or doctors alleged to have made such clinical reports.

4. In the said publication Radithor, caused to be published by respondent Bailey Radium Laboratories, Inc., to advertise the compound or preparation Radithor, the following paragraph is used under the heading "Summary of Effects" to summarize the results of using respondents' product Radithor; "An examination of the various chapters of this book will show the following effects of radioactive therapy:

Raises energy output.

Raises biological level.

Stimulates lowered metabolism.

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- Corrects imperfect nutritional processes.
- Eliminates toxic wastes.
- Acts as catalyzing agent of chemistry processes.
- Supplies ionization to the cells.
- Increases oxidation.
- Stimulates the functional activity of the endocrines.

When we consider this vast range of functions performed by the radioactive rays it is not difficult to appreciate why this single agent may bring amelioration to so many abnormal conditions."

The following diseases or conditions are listed in the said publication Radithor as being conditions in which internal radioactive treatment has been given by the use of radioactive water. The statement is made that "while the list gives many conditions regarded as symptoms rather than diseases yet in the last analysis diseases are themselves frequently but symptoms of a few primarily underlying causes which Radithor appears to ameliorate to a considerable degree."

Anemia.
 Arteriosclerosis.
 Arthritis.
 High blood pressure.
 Debility.
 Digestive disorders.
 Gout.
 Heart conditions.
 Kidney conditions.
 Menopause disorders.

Acidosis.
 Acne.
 Adenoids.
 Adynamia.
 Albuminuria.
 Alcoholism.
 Amenorrhea.
 Angina pectoris.
 Angioneurotic edema.
 Ankylosis.
 Anorexia.
 Apoplexy.
 Arthritis deformans.
 Arthritis sicca.
 Articular rheumatism.
 Asthenia.
 Asthma.
 Auto-intoxication.
 Backward development.
 Bacterial infections.

Bolls.
 Bright's disease.
 Bronchitis.
 Cataract.
 Catarrhal conditions.
 Catarrh of antrum and ethmoid.
 Cardiac neurosis.
 Chlorosis.
 Chorea.
 Chronic articular rheumatism.
 Chronic pharyngitis.
 Glycosuria.
 Gotter.
 Gonorrhoeal arthritis.
 Hardening of arteries.
 Hay fever.
 Headache.
 Heart conditions.
 Hodgkin's disease.
 Hydrarthrosis.
 Hypertension.
 Hyperthyroidism.
 Hypothyroidism.
 Hysteria.
 Impotency.
 Indigestion.
 Infection.
 Inflammatory conditions.
 Insomnia.
 Intercostal neuralgia.
 Interstitial nephritis.

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Ivy poisoning.	Enuresis.
Leukemia.	Epigastralgia.
Leukoplakia.	Epilepsy.
Locomotor ataxia (pains).	Erythro-polycythemia.
Low blood pressure.	Exophthalmos.
Lumbago.	Exhaustion.
Malaria.	Eye troubles.
Malignancies.	Fatigue.
Malnutrition.	Flatulence.
Melancholia.	Gastric indigestion.
Menorrhagia.	Gastric neurosis.
Mental aberration.	Gastro-intestinal fermentation.
Metrorrhagia.	Genital disorders.
Migraine.	Genito-urinary diseases.
Multiple neuritis.	Nausea.
Muscle pains.	Necrosis.
Muscular atrophy.	Nephritis.
Muscular rheumatism.	Nervous breakdown.
Myalgia.	Nervousness.
Myasthenia.	Obesity.
Myocarditis.	Paralysis agitans.
Menstrual disorders.	Parenthesia.
Neuralgia.	Pernicious anemia.
Neurasthenia.	Plumbism.
Neuritis.	Pneumonia.
Neurosis.	Polyneuritis.
Prostatitis.	Polyuria.
Rheumatism.	Psychosis.
Sexual decline.	Psoriasis.
Senility.	Pyelitis.
Skin disorders.	Pyelo-nephritis.
	Pyorrhea.
Chronic rhinitis.	Raynaud's disease.
Chronic skin diseases.	Rheumatoid arthritis.
Colds.	Rickets.
Colitis.	Sciatica.
Constipation.	Scleroderma.
Coronary sclerosis.	Sexual neurasthenia.
Cystitis.	Sinusitis and antrum conditions.
Cystic goiter.	Stomach disorders.
Deafness.	Subacute rheumatism.
Dental conditions.	Syphilitic reactions.
Dermatoses.	Tabes (lancinating pains).
Diabetes mellitis.	Thyrotoxicosis.
Diabetes insipidus.	Tic douloureux.
Duodenal indigestion.	Trifacial neuralgia.
Dysmenorrhea.	Tuberculosis of glands.
Dyspepsia.	Ulcers.
Dyspnea.	Varicose veins.
Eczema.	Vertigo.
Edema.	Wrinkles.

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In truth and in fact treatment with Radithor neither ameliorates nor cures nor appears to ameliorate to a considerable degree the diseases or conditions listed above but the use of Radithor in instances where these diseases or conditions are present or under any other conditions might be seriously harmful to the patient and result in an aggravation of disease.

PAR. 3. Respondent William J. A. Bailey has prepared books, leaflets, booklets, circulars, and/or other publications which have been published by respondents as the products of the minds of other persons. In these books, leaflets, booklets, circulars, and/or other publications Radithor is referred to as a treatment which has been successfully used by the alleged authors in many cases, when in truth and in fact the alleged authors not only had prescribed Radithor in a limited number of cases only, if at all, but had kept no accurate clinical records, the publications in such cases, being wholly the writings of respondent William J. A. Bailey.

PAR. 4. Respondent Bailey Radium Laboratories, Inc., purchases from the U. S. Radium Corp. the concentrated radioactive fluid which is diluted with distilled water, the only preparation necessary in the compounding of Radithor. In the books, leaflets, booklets, circulars, and/or other publications published under the auspices of the respondent Bailey Radium Laboratories, Inc., such expressions as "these laboratories carried on costly and extensive research, assisted by innumerable clinical tests, over a considerable time to develop a product that would best meet the requirements for the 'ideal treatment.' Only as a result of several years' effort in this direction was Radithor finally perfected."

"Radithor is thus distinctly a laboratory product." In truth and in fact no such research nor clinical tests were carried on and the place where the radioactive fluid is diluted to produce Radithor is not a laboratory and the use by respondent Bailey Radium Laboratories, Inc., of the word "laboratories" in its corporate name or in its advertising is false and misleading.

PAR. 5. Respondent Bailey Radium Laboratories, Inc., in its advertising and advertising matter refers to Radithor in the following terms, among others:

In no branch of medicine has greater progress been made than in the use of rays as therapeutic agents. This is especially true with respect to the radioactive rays which, in the form of Radithor, have become to-day an outstanding agency in the treatment of endocrine gland disorders.

In truth and in fact Radithor is not and never has been an outstanding agency in the treatment of endocrine gland disorders.

PAR. 6. The acts and things above alleged to have been done by respondent have the capacity and tendency to mislead and deceive the purchasing public into the belief that the preparation or compound Radithor—

1. Is a scientifically accurate method of treatment.
2. Is the result of many years of scientific research.
3. Is prepared in a laboratory.
4. Is a safe, effective, and dependable remedy that may be used by all purchasers thereof without inconvenience, sacrifice or danger or harmful results to physical health.
5. Is a remedy which will ameliorate the diseases and conditions listed in respondent's books, leaflets, booklets, circulars, and/or other publications.
6. Is being and has been used by many physicians with success, and that such physicians have written and published books and testimonials in which Radithor is recommended and its curative properties praised.

PAR. 7. The acts and practices of respondent are all to the prejudice of the public and of competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 5th day of February, 1930, issued its complaint against Bailey Radium Laboratories, Inc., a corporation, and William J. A. Bailey, individually and as president and as treasurer and as principal stockholder of the Bailey Radium Laboratories, Inc., respondents herein, and caused the same to be served upon said respondents as required by law, in which complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On March, 8, 1930, the respondents filed with the Commission an answer to the charges of the complaint. Subsequent thereto the Commission appointed John W. Addison, an examiner of the Federal Trade Commission, to take testimony and receive evidence in support of this complaint and in support of the respondents' answer.

Testimony on behalf of the Federal Trade Commission was received. Thereafter on September 29, 1931, the respondents filed with the Commission a motion whereby they moved for leave to withdraw the answer theretofore filed by the respondents and further moved that the pleading be accepted by the Commission as an answer within the terms of section 2 of Rule III of the Rules of Practice and Procedure of the Federal Trade Commission, and stated that for that purpose the respondents refrain from contesting the proceeding. On November 6, 1931, the Commission granted the said motion, and accepted the pleading as an answer, and the Commission being advised in the premises finds that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes,"

It is now ordered, That respondents, Bailey Radium Laboratories, Inc., a corporation, and William J. A. Bailey, their agents, representatives, servants, and employees, cease and desist in connection with the offering for sale and sale in interstate commerce of the radioactive water heretofore known as Radithor:

1. From representing that the outstanding achievement in the application of radioactive rays has been the development of Radithor.

2. From representing that Radithor is the climax of 30 years of toil by hundreds of scientists who labored with invisible rays that the cause of humanity might be served.

3. From representing that the alpha ray in radium, as contained in respondents' product Radithor, is not destructive.

4. From publishing or causing to be published and distributing or causing to be distributed statements of physicians as to the therapeutic value of radioactive therapy not specifically applicable to Radithor, unless the fact that the said statements as to the therapeutic value of radioactive therapy were not made specifically in connection with the product Radithor is also plainly published or printed and distributed therewith.

5. From publishing or causing to be published and distributing or causing to be distributed statements of various physicians as to the therapeutic value of Radithor unless and until the said statements are based on the said physicians' clinical experiences in connection with the use of the product Radithor.

6. From representing that radiotherapy has any of the following effects:

Raises energy output.

Raises biological level.

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Stimulates lowered metabolism.

Corrects imperfect nutritional processes.

Eliminates toxic wastes.

Acts as catalyzing agent of chemistry processes.

Supplies ionization to the cells.

Increases oxidation.

Stimulates the functional activities of the endocrines.

7. From representing that the product Radithor ameliorates or appears to ameliorate to a considerable degree the following conditions or symptoms, or any of them :

Anemia.	Chronic articular rheumatism.
Arteriosclerosis.	Chronic pharyngitis.
Arthritis.	Glycosuria.
Debility.	Goiter.
Digestive disorders.	Gonorrheal arthritis.
Gout.	Hardening of arteries.
Heart conditions.	Hay fever.
High blood pressure.	Headache.
Kidney conditions.	Heart conditions.
Menopause disorders.	Hodgkin's disease.
	Hydrarthrosis.
Acidosis.	Hypertension.
Acne.	Hyperthyroidism.
Adenoids.	Hypothyroidism.
Adynamia.	Hysteria.
Albuminuria.	Impotency.
Alcoholism.	Indigestion.
Amenorrhoea.	Infection.
Angina pectoris.	Inflammatory conditions.
Angioneurotic edema.	Insomnia.
Ankylosis.	Intercostal neuralgia.
Anorexia.	Interstitial nephritis.
Apoplexy.	Ivy poisoning.
Arthritis deformans.	Leukemia.
Arthritis sicca.	Leukoplakia.
Articular rheumatism.	Locomotor ataxia (pains).
Asthenia.	Low blood pressure.
Asthma.	Lumbago.
Auto-intoxication.	Malaria.
Backward development.	Malignancies.
Bacterial infections.	Malnutrition.
Boils.	Melancholia.
Bright's disease.	Menorrhagia.
Bronchitis.	Mental aberration.
Cataract.	Metrorrhagia.
Catarrhal conditions.	Migraine.
Catarrh of anthrum and ethmoid	Multiple neuritis.
Cardiac neurosis.	Muscle pains.
Chlorosis.	Muscular atrophy.
Chorea.	Muscular rheumatism.

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Myalgia.	Gastric indigestion.
Myasthenia.	Gastric neurosis.
Myocarditis.	Gastro-intestinal fermentation.
Menstrual disorders.	Genital disorders.
Neuralgia.	Genito-urinary diseases.
Neurasthenia.	Nausea.
Neuritis.	Necrosis.
Neurosis.	Nephritis.
Prostatitis.	Nervous breakdown.
Rheumatism.	Nervousness.
Sexual decline.	Obesity.
Senility.	Paralysis agitans.
Skin disorders.	Paresthesia.
Chronic rhinitis.	Pernicious anemia.
Chronic skin diseases.	Plumbism.
Colds.	Pneumonia.
Colitis.	Polyneuritis.
Constipation.	Polyuria.
Coronary sclerosis.	Psoriasis.
Cystitis.	Psychosis.
Cystic goiter.	Pyelitis.
Deafness.	Pyelo-nephritis.
Dental conditions.	Pyorrhea.
Dermatoses.	Raynaud's disease.
Diabetes mellitis.	Rheumatoid arthritis.
Diabetes insipidus.	Rickets.
Duodenal indigestion.	Sciatica.
Dysmenorrhea.	Scleroderma.
Dyspepsia.	Sexual neurasthenia.
Dyspnea.	Sinusitis and antrum conditions.
Eczema.	Stomach disorders.
Edema.	Subacute rheumatism.
Enuresis.	Syphilitic reactions.
Epigastralgia.	Tabes (lancinating pains).
Epilepsy.	Thyrototoxicosis.
Erythro-polycythemia.	Tic douloureux.
Exophthalmos.	Trifacial neuralgia.
Exhaustion.	Tuberculosis of glands.
Eye troubles.	Ulcers.
Fatigue.	Varicose veins.
Flatulence.	Vertigo.
	Wrinkles.

8. From publishing or causing to be published and distributing or causing to be distributed books, leaflets, booklets, circulars, or other publications advertising respondents' product Radithor, which have been written or prepared by a person or persons other than the person or persons held out in the said books, leaflets, booklets, circulars, or other publications as the author or authors thereof.

9. From using the corporate name, Bailey Radium Laboratories, Inc., or representing otherwise that respondents' product Radithor is manufactured by respondents in a laboratory.

10. From representing that respondents' product Radithor is an outstanding agency in the treatment of endocrine gland disorders.

11. From representing that respondents' product Radithor is harmless.

It is further ordered, That respondents, Bailey Radium Laboratories, Inc., and William J. A. Bailey, shall within 30 days after the service upon them of a copy 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 hereinbefore set forth.



ORDERS OF DISMISSAL

NO RING CORPORATION, AMERICAN DRUGGISTS' SYNDICATE, INC., AND VADSCO SALES CORPORATION. Complaint, May 2, 1930. Order, April 7, 1931. (Docket 1815.)

Charge: Using misleading trade name, misbranding or mislabeling and advertising falsely or misleadingly as to qualities of product; in connection with manufacture and sale of a product called "No Ring," a cleaning fluid for removing stains, grease, and other spots and marks from fabrics, etc.

Dismissed, after answer and trial, without assignment of reasons, Commissioner Humphrey filing dissenting opinion.

Appearances: *Mr. Harry D. Michael* for the Commission; *Miller & Chevalier*, of Washington, D. C., and *Cutting, Phillips & Hall*, of New York City, for respondents.

Dissent by Commissioner Humphrey

The respondent in this case sells a cleaning preparation which it calls "No Ring." The undisputed evidence shows that this preparation is substantially the same as several others, and is in no respect any better than several similar preparations on the market that are sold in competition with it.

Practically all clothes or garments upon which cleaning preparations are used, are more or less soiled. That a preparation can be made that will produce a clean spot on a soiled cloth, and that no difference will be shown between the clean spot and the remaining part of the soiled garment, is not even claimed by the respondent. Such claim insults ordinary intelligence. The cleaner the spot and the more perfect the preparation, the greater the difference between the spot and the rest of the garment, and the plainer the ring. The virtue of the preparation has nothing whatever to do with the leaving of a ring. This is not only the undisputed evidence, but is common knowledge and common sense.

The ring is always there. It is a question only of manipulation, and to so distribute by what is known as feathering the outer rim of the spot until it is not noticeable.

There is no dispute as to what the evidence shows in regard to all of these propositions. The sole question in this case is whether the respondent imputes the removal of the ring to the virtue of its product. If the respondent does, then it is guilty of false and mis-

leading practices. Let us see what some of the statements are in the advertising of respondent. It states, "No Ring is perfect and positive in its action. The trouble with most spot removers is that when they remove the spot they usually leave a ring." I submit that that is a clear and positive statement to the effect that "No Ring" does not leave a ring—which is absolutely untrue and which respondent itself admitted was false before the Commission. "The cleaning powers of 'No Ring' and not the rubbing is what removes the spot; therefore rub gently for successful results." It will be seen by this statement that respondent admits that it is the rubbing that removes the ring and the preparation that removes the spot. In other words, in one part of its advertisements it flatly contradicts its statements in another. Therefore, the majority argues that unless the buyer of a twenty-five cent bottle of this preparation takes time in a drug store, amid the sale of hot dogs and cold drinks, to read twenty-four small pages in small type of instructions, and thus discover for himself that it is the manipulation and not the product that removes the ring, then said purchaser is guilty of inexcusable negligence.

Again in its advertisements respondent says: "No Ring is different—a secret formula." This is an absolute fraudulent and untrue statement and has been condemned over and over by the Commission in other advertisements, for the Department of Agriculture has issued a bulletin in which practically the same preparation is recommended for the same purposes as that of the product of the respondent. Not only that, but in this bulletin substantially the same directions are given for the use of the preparation. I am not asserting that the respondent got its ideas both as to the preparation and as to the use of it from the Agriculture Department, but it could have done so without substantially lessening the virtue of its product.

"No Ring" is not different from other preparations, and it is not a secret formula, but this statement is made in the advertising that accompanies each bottle of the preparation. The record of the Commission will show that we have condemned similar statements of false advertising in hundreds of cases.

The use of the trade mark of respondent, a circle inclosing the words "No Ring," always printed in red, on four sides of the bottle, disconnected from any explanation, is in itself a fraudulent practice and one that has been condemned by the Commission in many cases. Always, when a trade mark has a tendency to mislead or does not state the whole truth, as is admittedly the fact in this case, we require respondent to qualify such statement.

In the case of the Arnold Stone Company, where the respondent was engaged in the manufacture of a conglomerate of stone, similar

to concrete, and that was cast in a mold, the respondent was prohibited from using the word "stone," even with the explanation accompanying it that it was "cast stone," and yet if N. Webster knows his dictionary, it is "cast stone." The buyer of this conglomerate specified the size and shape and the ingredients of which it was to be made, which could be used by no one else, yet the majority held that there was a tendency to deceive him and the public on the theory that the buyer might be deceived because respondent called it "cast stone," although he had himself ordered the ingredients of which it was made. Further they held that even if the buyer was not deceived, he might build a house sometime in the future and that he might, or his heirs might or his assigns might, or their heirs or their assigns might sell the house and the purchaser to whom they sold it might, or his heirs might, or his assigns might, or their heirs or assigns might, sell the house; and that the purchaser in some instance might be deceived as to the quality of the material used in the building, because the grandfather or the great grandfather, or the great great grandfather of the builder might have been deceived by the quality of the product when the house was constructed—although he himself had ordered the product; ordered its size and shape, and ordered the ingredients of which it was composed. Here the public must be protected, even unto the third and fourth generation, from a possible deception that to my mind is not conceivable even in the case of the original purchaser.

The same doctrine was laid down in the case of "Sani-Onyx"—a product that is used for bathtubs and other articles. The Commission prohibited the use of the name "Sani-Onyx" upon the theory that some laboring man might be deceived in the purchasing of a bathtub by that name for ten or fifteen dollars, and be under the impression that it was composed of onyx—so customary has become the use of onyx bathtubs among the poorer classes. Or that some one would construct an apartment or hotel, and as in the case of the Arnold Stone Company, there would be a secondary deception, where the owner might sell in the distant future to somebody else, and he might sell to a purchaser who might think that he was getting a hotel or apartment house, the bathtubs and other toilet equipment of which were made of onyx. There is as striking resemblance between the material "Sani-Onyx" and natural onyx as there is, between the material used in paving the streets of the New Jerusalem and the material that is used in making the pavements of "good intentions."

I cite the foregoing cases to show to what extreme the majority has gone in some instances to protect the public, and in the instant case to what extreme they have gone to let the public protect itself. The respondent was not required to revise its advertising, even to

the extent which they voluntarily offered. I do not criticize the majority. I simply can not follow their logic, but cheerfully admit that if consistency is a jewel, then here is a gem of so "purest ray serene," that even "No Ring" can not add to its brilliance.

I can only account for the confusion in this case on the theory that a couple of experts appeared before the trial examiner and went through a "thimble rigging" performance that made the trial examiner dead certain that he could pick up the shell under which the pea was hidden. He tried it with the usual result.

Like the physician, when the Commission dismisses a complaint, it buries its mistakes, but a dismissal decides nothing, and sometimes there is a resurrection. The only hope of the public so far as this case is concerned, is that if the respondent continues its unfair and misleading practices, another proceeding will be brought against them and a different verdict rendered—a thing not unknown in the Commission.

A. G. SPALDING & BROS. Complaint, March 10, 1930.¹ Order, April 18, 1931. (Docket 1583.)

Charge: Subsidizing and/or purchasing discerning, expert and ostensibly disinterested patronage and testimonials, and advertising falsely or misleadingly in regard thereto, and entering into exclusive and tying contracts with dealers, clubs, leagues, etc. (in violation of sec. 3 of the Clayton Act); in connection with the manufacture and sale of sporting goods and equipment.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed in view of the signature by the respondent to the Trade Practice Conference Rules for the Athletic Goods Industry, which cover the allegations of the complaint.

Appearances: *Mr. Baldwin B. Bane* for the Commission; *Mr. Gilbert H. Montague* and *Redding, Greeley, O'Shea & Campbell* of New York City, for respondent.

KOTEX Co. Complaint, April 10, 1930. Order, April 23, 1931. (Docket 1782.)

Charge: Advertising falsely or misleadingly as to composition of product; in connection with advertisement, offer and sale of a so-called sanitary napkin.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Wise, Whitney & Parker* of New York City, for respondent.

¹Amended.

IRVING A. ABRAMS, AN INDIVIDUAL TRADING AS GLOBE SCIENTIFIC Co. Complaint, October 22, 1929. Order, April 29, 1931. (Docket 1711.)

Charge: Advertising falsely or misleadingly as to pretended free goods, prices and sales, and makers of products dealt in, and misbranding or mislabeling as to prices; in connection with sale of watches, fountain pens and pencils by mail order.

Dismissed, for the reason that respondent can not be located.

Appearances: *Mr. Robert H. Winn* for the Commission.

THE LEADITE Co., INC. Complaint, December 10, 1929. Order, April 30, 1931. (Docket 1730.)

Charge: Using misleading corporate name, naming product misleadingly as to composition, and advertising falsely or misleadingly in regard thereto; in connection with the manufacture and sale of a compound for making joints in cast-iron bell and spigot pipe.

Dismissed, after answer and stipulation, without assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Pepper, Bodine, Stokes & Schoch*, of Philadelphia, Pa., for respondent.

WHEELING STEEL CORPORATION, JOHN WOOD MANUFACTURING Co., DETROIT RANGE BOILER & STEEL BARREL Co., W. A. CASE & SON MANUFACTURING Co., CASEY-HEDGES Co., INC., AND THE SCAIFE MANUFACTURING Co. Complaint, May 17, 1927. Order, May 1, 1931. (Docket 1461.)

Charge: Selling products on a delivered and fixed lump sum basis in all markets (in the United States), and below cost in some, concurrently, with intent of eliminating competition and creating a monopoly, in violation of section 5 of the Federal Trade Commission Act, and discriminating in price, in violation of section 2 of the Clayton Act; in connection with the manufacture and sale of range boilers.

Dismissed, after answers, without assignment of reasons.

Appearances: *Mr. Martin A. Morrison* for the Commission; *Kiw-Miller, Baar & Morris* of Washington, D. C., for Wheeling Steel Corporation and John Wood Manufacturing Co., *Mr. William J. Griffin*, of Detroit, Mich., for Detroit Range Boiler & Steel Barrel Co., *Slee, O'Brian, Helling & Ulsh*, of Buffalo, N. Y., and *Gregory & Todd*, of Washington, D. C., for W. A. Case & Son Manufacturing Co., *Sizer, Chambliss & Sizer*, of Chattanooga, Tenn., for Casey-Hedges Co., Inc., and *Mr. Charles F. Patterson*, of Pittsburgh, Pa., for Scaife Manufacturing Co.

REX Co. Complaint, September 19, 1929. Order, May 16, 1931. (Docket 1693.)

Charge: Maintaining resale prices in violation of section 5 of the Federal Trade Commission Act, and discriminating in price in violation of section 2 of the Clayton Act; in connection with the manufacture and sale of insecticides, fungicides, and like products.

Dismissed, after answer, "for the reason that the respondent discontinued the unfair methods of competition charged in the complaint before the complaint issued."

Appearances: *Mr. Robert H. Winn* for the Commission; *Geddes, Schmettau, Williams, Eversman & Morgan*, of Toledo, Ohio, for respondent.

ZAPON LEATHER CLOTH Co. Complaint, March 22, 1929. Order, May 20, 1931. (Docket 1586.)

Charge: Naming product misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of imitation leathers.

Dismissed, after answer, for the reason "that respondent had gone out of business and had been dissolved as a corporation before complaint was issued."

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Thomas J. Laffey*, of Wilmington, Del., for respondent.

WALTER E. BLAIR, ARTHUR J. BLAIR, ALBERT BLAIR, MATTHEW E. BLAIR, copartners engaged in business as Blair Bros. Lumber Co. Complaint, May 23, 1929. Order, June 8, 1931. (Docket 1665.)

Charge: Misrepresenting product and advertising falsely or misleadingly in regard thereto; in connection with the sale of logs and/or timber products and/or lumber products.

Dismissed, after answer, trial, and stipulation, for the reason that "respondents are not engaged in interstate commerce."

Appearances: *Mr. Eugene W. Burr* for the Commission; *Mr. Abe Darlington* and *Mr. Henry S. Lyon*, of Placerville, Calif., for respondents.

RADIO CORPORATION OF AMERICA. Complaint, May 23, 1928. Order, June 17, 1931. (Docket 1529.)

Charge: Contracting on an exclusive and tying basis, with the effect of substantially lessening competition or tending to create a monopoly in a line of commerce, and with a dangerous tendency unduly to hinder competition and create a monopoly; in violation of section 3 of the Clayton Act and section 5 of the Federal Trade Commission Act, respectively; in connection with the purchase and sale

of various apparatus used in radio, including devices for radio reception, radio receiving sets, and vacuum tubes for use in receiving sets sold by it and others.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Edward L. Smith* for the Commission; *Cotton, Franklin, Wright & Gordon* and *Davis, Polk, Wardwell, Gardiner & Reed*, of New York City, and *Mr. Joseph P. Tumulty*, of Washington, D. C., for respondent.

NATURAL HEALTH ASSOCIATION, INC., MORRIS BOTWEN AND EDWIN J. ROSS. Complaint, March 2, 1929. Order, June 18, 1931. (Docket 1577.)

Charge: Misrepresenting business status, advantages, activities and connections, nature of product, and services; in connection with the publishing and sale of a book entitled "Real Health."

Dismissed, after answer and trial, by the following order:

"This matter coming on to be heard upon the memorandum of the chief counsel dated May 28, 1931, and the Commission being advised in the premises,

"*It is ordered*, That this matter be and the same hereby is dismissed without prejudice."

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Harry A. Schwartz*, of New York City, for Natural Health Association, Inc., and *Morris Botwen*, and *Haas & Kantor*, of New York City, for Edwin J. Ross.

BENEDICT STONE CO. Complaint, September 12, 1929. Order, June 19, 1931. (Docket 1692.)

Charge: Using misleading corporate name, misrepresenting product and advertising falsely or misleadingly; in connection with the manufacture and sale of composition blocks as "Benedict Stone."

Dismissed, after answer, by the following order:

"The above-entitled proceeding coming on for consideration by the Commission, and the Commission now being fully advised in the premises,

"*It is ordered*, In view of the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the matter of *Federal Trade Commission v. Arnold Stone Company* [49 F. (2d) 1017], Docket 1732, that the complaint herein be and the same is hereby dismissed."

Appearances: *Mr. Robert H. Winn* for the Commission; *Curtis, Fosdick & Belknap*, of New York City, for respondent.

MULHENS & KROPFF, INCORPORATED. Complaint, June 30, 1928. Order, June 22, 1931. (Docket 1531.)

Charge: Appropriating trade name and trade-mark of competitor, and of competitor's product, appropriating or simulating labels and dress of goods of product of competitor, and advertising falsely or misleadingly; in connection with the manufacture and sale of chemical and toilet products, including perfume, toilet water, soap, dusting powder, and bath salts.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Baldwin B. Bane* for the Commission; *Emery, Booth, Janney & Varney*, of New York City, for respondent.

ASBESTOS SHINGLE, SLATE AND SHEATHING CO. Complaint, May 17, 1930.¹ Order, June 23, 1931. (Docket 1683.)

Charge: Using misleading corporate name, misrepresenting product, disparaging competitive products and advertising falsely or misleadingly; in connection with the manufacture and sale of roofing materials and other building materials.

Dismissed, after answer and trial, "upon the ground that the practices complained of have been abandoned."

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Montgomery & McCracken*, of Philadelphia, Pa., for respondent.

GEIGER CANDY Co. Complaint, May 3, 1930. Order, June 23, 1931. (Docket 1823.)

Charge: Employing lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Dismissed "for the reason that the respondent has been adjudicated bankrupt and is no longer engaged in the manufacture and sale of candy."

Appearances: *Mr. Henry C. Lank* for the Commission.

PAUL BALME, trading under the firm name and style of B. Paul. Complaint, February 17, 1931. Order, June 24, 1931. (Docket 1913.)

Charge: Using misleading trade name, advertising falsely or misleadingly and misbranding or mislabeling as to composition, nature and results of product; in connection with the manufacture and sale of cosmetics and preparations for coloring hair.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Munn, Anderson, Stanley, Foster & Liddy*, of New York City, for respondent.

¹ Amended.

SEXTON MANUFACTURING Co. Complaint, March 8, 1930. Order, June 27, 1931. (Docket 1769.)

Charge: Appropriating, using, and claiming trade-mark and brand of competitor and advertising falsely or misleadingly as to maker of product dealt in; in connection with the manufacture and sale of various articles of clothing, including underwear and night wear.

Dismissed, after answer and trial, without prejudice or assignment of reasons.

Appearances: *Mr. Harry D. Michael* for the Commission; *Mr. Frank Y. Gladney*, of St. Louis, Mo., for respondent.

F. H. GILLESPIE, M. L. GILLESPIE AND A. F. MACDOUGALL, COPARTNERS, trading as Gillespie Furniture Co. Complaint, December 14, 1929. Order, June 30, 1931. (Docket 1739.)

Charge: Misrepresenting product as to composition and advertising falsely or misleadingly in regard thereto; in connection with the manufacture and sale of household and office furniture.

Dismissed, after answer and trial, without assignment of reasons, Chairman Hunt and Commissioner McCulloch dissenting, and Commissioner McCulloch filing dissenting opinion.

Appearances: *Mr. Edward L. Smith* for the Commission; *Nims & Verdi*, of New York City, and *Mr. Daniel R. Forbes*, of Washington, D. C., for respondents; *Peck & White*, of Philadelphia, for Moore Bros., Inc., and 67 others as Amici Curiae; and *Resleure & Hill*, of San Francisco, Calif., for Los Angeles Chamber of Commerce, and 43 others as Amici Curiae.

Dissent by Commissioner McCulloch

Respondent, Gillespie Furniture Co., deals in furniture made of wood grown in the Philippine Islands, and in selling respondent represents it as made of Philippine mahogany. This is charged to be a false and misleading representation—that the wood is not mahogany.

True mahogany is a wood of the botanical species *Swietenia*, of the tree family *Meliaceae*. Furniture made out of it has, for time out of mind, been held in high esteem.

The wood now under consideration has never been known in the Philippine Islands as mahogany—it is called Lauan and Tanguile, and is not of the tree family *Meliaceae*. It belongs to a family entirely different from mahogany, and it is first called mahogany after it has been received here and put on the market by lumber dealers. In other words, it is not, botanically speaking, mahogany, though it has some of the same characteristics. This much is shown by uncontradicted testimony. According to what the writer considers the preponderance of the evidence, this wood is quite inferior

to true mahogany for use in making furniture and other things, and does not come up to the commercial test of mahogany. When highly finished it has the appearance of mahogany, and its designation as mahogany is deceptive to the purchasing public.

Several years ago the Commission issued complaints against six separate respondents upon the charge of falsely representing the Philippine wood Lauan or Tanguile to be mahogany, and on trial of the cases orders were issued requiring each of the respondents to desist. The cases were reviewed by a Circuit Court of Appeals, on application of a respondent, and the orders of the Commission were affirmed. *26 F. (2d) 340*. The Supreme Court denied the respondent's application for review on certiorari.

The court decided that the botanical test was controlling, and in disposing of that question said:

It becomes unnecessary for us to discuss here the difference of expert opinion as to whether the trade designation mahogany should be confined to one or more species of the genus *Swietenia*, for wood from trees which in no way belong to either the genus or mahogany tree family, is neither true mahogany nor any kind of mahogany. And the experts justified the findings of the Commission that the woods imported from the Philippine Islands and sold by respondent as Philippine mahogany are not from any tree of the *Meliaceae* family.

The court also approved the Commission's finding that the Philippine wood was not mahogany from a commercial or usable standpoint.

Subsequently numerous other concerns entered into stipulations with the Commission to desist from calling the wood mahogany.

The anomalous situation is now presented that whilst six business and manufacturing concerns are restrained by final judgments of the Federal Courts of Appeal from representing the Philippine wood as mahogany, by the decision now rendered in this case, the remainder of the furniture trade is left free to represent it to be mahogany.

Another lamentable result of the present decision of the Commission is that the deceptive calling of the Philippine wood mahogany is, according to substantial testimony in the record, causing the public to lose confidence in or desire for mahogany and to turn to other kinds of material.

HEALTH LABORATORIES, INC. Complaint, June 12, 1930. Order, June 30, 1931. (Docket 1844.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature, results, and endorsement of product and misrepresenting business status or advantages; in connection with manufacture, advertisement, sale and offer for sale of a proprietary medicine under the name of Acidine.

Dismissed, after answer and stipulation, by the following order:

This matter coming on to be heard by the Commission upon a stipulation as to the facts therein entered into on June 20, 1931, by and between respondent and Robt. E. Healy, chief counsel, subject to the approval of the Commission, and the memorandum of the chief counsel forwarding the same and the memorandum of Trial Attorney E. J. Hornibrook recommending the dismissal of this matter without prejudice and the Commission being fully advised in the premises:

It is ordered, (1) That the said stipulation be and the same hereby is approved by the Commission; (2) That this matter be and the same is hereby dismissed without prejudice.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Clinton Robb*, of Washington, D. C., for respondent.

CONTINENTAL STEEL CORPORATION. Complaint,¹ March 26, 1929. Order, September 28, 1931. (Docket 1589.)

Charge: Acquisition of stock in competitors in violation of section 7 of the Clayton Act; in connection with the rolling, fabricating and sale of steel sheets.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Edward L. Smith* for the Commission; *Smith, Remster, Hornbrook & Smith*, of Indianapolis, Ind., and *Black, McCuskey, Ruff & Souers*, of Canton, Ohio, for respondent.

NEW ENGLAND ELECTRICAL FIXTURE CO., INC., AND ESTHER FISTEL, ABRAHAM FISTEL, AND HARRY PARKER, individually and as agents thereof. Complaint, January 11, 1930. Order, September 28, 1931. (Docket 1749.)

Charge: Misrepresenting business status or identity and connections, nature, effectiveness, and result of products offered or dealt in, offering deceptive inducements to purchase, securing prospect's signature to contract of sale through trickery, and abusing and/or using legal process improperly; in connection with the sale of electric lamp fixtures and parts, including a reflector or globe, with an electric light bulb ready for attachment.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and the Commission now being fully advised in the premises:

It is ordered, That the complaint herein be, and the same is hereby, dismissed as to the respondent corporation, New England Electrical Fixture Co., Inc., and the respondents, Esther Fistel and Harry Parker; and

It is further ordered, That the complaint be, and the same is hereby, dismissed without prejudice as to respondent Abraham Fistel.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Golden & Golden*, of New York City, for respondents.

¹ Commissioner Humphrey dissenting.

CITRUS PRODUCTS Co. Complaint, October 10, 1929. Order, September 29, 1931. (Docket 1700.)

Charge: Naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly as to composition; in connection with the manufacture and sale of concentrates or sirups.

Dismissed, after answer and trial, without prejudice.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Lannen & Hickey*, of Chicago, Ill., for respondent.

McLAREN CONSOLIDATED CONE CORPORATION. Complaint, May 10, 1930. Order, October 6, 1931. (Docket 1830.)

Charge: Contracting or leasing on exclusive or tying basis, in violation of section 3 of the Clayton Act; in connection with the leasing or licensing of machinery, apparatus or implements for the manufacture of ice cream cones and cup pastry.

Dismissed, after answer and trial, without assignment of reasons.¹

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Tomlinson, Vilas & Stilwell* and *Breed, Abbott & Morgan*, of New York City, for respondent.

A. J. DENISTON, JR., trading as Deniston & Co. Complaint, December 22, 1930. Order, October 7, 1931. (Docket 1889.)

Charge: Naming product misleadingly and advertising falsely or misleadingly as to composition, in connection with the manufacture and sale of a certain type of roofing nail called Deniston Led-Hed.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Mr. Stephen A. Day*, of Chicago, Ill., and *Mr. Eugene L. Culver*, of Washington, D. C., for respondent.

J. F. LAZIER MANUFACTURING Co., INC. Complainant, February 7, 1930. Order, October 14, 1931. (Docket 1758.)

Charge: Using misleading trade name, misbranding or mislabeling and advertising falsely or misleadingly, in connection with the manufacture and sale of artificially colored and/or artificially flavored extracts, concentrates and flavors.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Mr. John S. Hall*, of Chicago, Ill., for respondent.

¹ Other than reference to memorandum of chief counsel.

E. GREENFIELD'S SONS, INC. Complaint, April 30, 1930. Order, October 28, 1931. (Docket 1804.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Dismissed, after answer, by the following order:

The above entitled proceeding coming on for consideration upon the complaint of the Commission and memoranda of the chief examiner and the chief counsel, and the Commission now being fully advised in the premises,

It is ordered, That the complaint be and the same is hereby dismissed for the reason that the respondent has disposed of all its assets and is no longer engaged in the manufacture and sale of candy.

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. W. Parker Jones*, of Washington, D. C., for respondent.

HURTY-PECK & Co. Complaint, May 7, 1930. Order, October 28, 1931. (Docket 1826.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to composition; in connection with the manufacture and sale of fruit extracts, concentrates and compounds.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Fesler, Elam & Young*, of Indianapolis, Ind., for respondent.

WARNER-JENKINSON Co. Complaint, May 29, 1930. Order, October 28, 1931. (Docket 1839.)

Charge: Advertising falsely or misleadingly as to composition; in connection with the manufacture and sale of extracts, concentrates, and colors, used in the flavoring and coloring of soft drinks, bakery products, confectionery, ice cream, and various articles of food.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James W. Nichol* and *Mr. G. Ed. Rowland* for the Commission.

THE SEA SLED CORPORATION, Docket 1734, LOUIS BOSSERT & SONS, INC., Docket 1735, BLACK & YATES, INC., Docket 1736, PACIFIC DOOR & SASH Co., Docket 1737, FRANK PAXTON LUMBER Co., Docket 1738, E. J. STANTON & SON, Docket 1740, CARL WENDELSTEIN, trading as Carl Wendelstein & Co., Docket 1741, CHICAGO WAREHOUSE LUMBER Co., Docket 1742, WESTERN HARDWOOD LUMBER Co., Docket 1743, and CADWALLADER-GIBSON Co., INC., Docket 1744. Complaints, December 14, 1929. THE MATTHEWS Co., INC., Docket 1751. Complaint, January 20, 1930. DART BOATS, INC., Docket 1768. Complaint, March 6, 1930. BOYD-MARTIN BOAT Co., Docket 1906. Complaint, January 23, 1931. GILLESPIE FURNITURE Co., and FURNITURE CORPORATION OF

AMERICA, LTD., Docket 1916. Complaint, February 21, 1931. Dismissal orders, November 7, 1931.

Charge: Misrepresenting product as to composition and advertising falsely or misleadingly in regard thereto; through misrepresenting lumber and other products in invoices, price lists, trade literature, etc., as being mahogany, Philippine mahogany, bataan mahogany and other purported species and kinds of mahogany as the case may be.¹

Dismissed, after answer, stipulation and trial, by orders which were identical, except for name of respondent and docket number, and which read as follows:

The respondent herein having tendered this Commission the following stipulation:

Respondent hereby stipulates and agrees that in its sale, description, and advertisement of the wood of the Philippine Islands which it has heretofore designated and described as "Philippine Mahogany" and articles of commerce made therewith, it will not employ the word "mahogany" in connection with the sale of said wood without the modifying term "Philippine,"

And the Commission having accepted the same,

It is hereby ordered, That the complaint herein be, and the same is hereby dismissed.

By the Commission: Commissioner McCulloch dissenting.

Appearances:

Mr. Edward L. Smith for the Commission;

Nims & Verdi, of New York City, for Sea Sled Corporation, Louis Bossert & Sons, Inc., Black & Yates, Inc., Pacific Door & Sash Co., Frank Paxton Lumber Co., E. J. Stanton & Son, Carl Wendelstein & Co., Chicago Warehouse Lumber Co., Western Hardwood Lumber Co., Cadwallader-Gibson Co., Inc., and Gillespie Furniture Co., et al.;

True, Crawford & True, of Port Clinton, Ohio, for Matthews Co., Inc.

Geddes, Schmettau, Williams, Eversman & Morgan, of Toledo, Ohio, for Dart Boats, Inc.;

¹ The businesses of the various respondents, more specifically, were as follows:

The Sea Sled Corporation, D. 1734, Louis Bossert & Sons, Inc., D. 1735, The Matthews Co., Inc., D. 1751, Dart Boats, Inc., D. 1768, and Boyd-Martin Boat Co., D. 1906. Manufacture and sale, among other things, of motor boats, with their decks, plankings, and certain other parts consisting of woods other than mahogany, but resembling mahogany in general appearance.

Black & Yates, Inc., D. 1736, Pacific Door & Sash Co., D. 1737, Frank Paxton Lumber Co., D. 1738, E. J. Stanton & Son, D. 1740, Carl Wendelstein, trading as Carl Wendelstein & Co., D. 1741, Chicago Warehouse Lumber Co., D. 1742, Western Hardwood Lumber Co., D. 1743, and Cadwallader-Gibson Co., Inc., D. 1744. Sale of lumber and other wood products, including lumber and other wood products consisting of woods other than mahogany, but resembling mahogany in general appearance.

Gillespie Furniture Co. and Furniture Corporation of America, Ltd., D. 1916. Manufacture and sale of household and office furniture made of woods other than mahogany, but resembling mahogany in general appearance.

Mr. John W. Eckelberry, of Detroit, Mich., for Boyd-Martin Boat Co.;

With all of whom *Mr. Daniel R. Forbes*, of Washington, D. C., also appeared for their aforesaid respective clients; and

Mr. O. A. Neal, of Portland, Oreg., for Furniture Corporation of America, Ltd.

THE CROWN OVERALL MFG. CO. Complaint, June 29, 1929. Order, November 9, 1931. (Docket 1676.)

Charge: Acquisition of stock of competitor, in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of working garments, including overalls and trousers.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Edward L. Smith* for the Commission; *Moulinier, Bettman & Hunt*, of Cincinnati, Ohio, for respondent.

NATIONAL PASTRY PRODUCTS CORPORATION. Complaint, February 12, 1930. Order, November 11, 1931. (Docket 1760.)

Charge: Acquiring stock in competitors in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of pastry products, cups, cakes, confections, sirups, ice cream cones, etc.

Dismissed after answer and trial, without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Goulston & Storrs* and *Mr. Samuel Markell*, of Boston, Mass., for respondent.

BOND BROTHERS & Co., INC. Complaint, November 24, 1930. Order, November 11, 1931. (Docket 1878.)

Charge: Misrepresenting quality of product and terms or conditions of sale in violation of the provisions of section 5 of the Federal Trade Commission Act, and section 4 of the Export Trade Act; in connection with the exportation of baled newspapers.

Dismissed, after answer and trial, "without prejudice on the ground of the abandonment by respondent of the practices alleged in the complaint."

Appearances: *Mr. Richard P. Whiteley* for the Commission.

PHILIP MORRIS CONSOLIDATED, INC. Complaint, October 18, 1929. Order, December 22, 1931. (Docket 1705.)

Charge: Acquisition of stock in competitors in violation of section 7 of the Clayton Act; in connection with acquisition of stock in two theretofore competing corporations engaged in the sale of cigarettes.

Dismissed, after answer and trial, without assignment of reasons, Commissioner McCulloch dissenting.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Spence, Hoplcins & Walser*, of New York City, for respondent.

RICHARDS & Co., INC., AND THE ZAPON Co. Complaint, May 20, 1931. Order, December 22, 1931. (Docket 1953.)

Charge: Misrepresenting product as to nature or composition, advertising falsely or misleadingly and misbranding or mislabeling in said respects; in connection with the manufacture and sale of an imitation leather.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Thomas J. Laffey*, of Wilmington, Del., for respondents.

STIPULATIONS

DIGESTS OF GENERAL STIPULATIONS AND AGREEMENTS TO CEASE AND DESIST¹

785. False and Misleading Testimonial Advertising—Underwear.— Respondent, a corporation, engaged in the manufacture of men's, women's, and children's underwear and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce of any and all testimonials and endorsements, unless the same represent and are the free, voluntary, and unbiased opinion or opinions of the French couturier or couturiers purporting to be the authors thereof, and which said opinion or opinions is or are based on actual use of and experience with the products referred to in said testimonials and endorsements. The said respondent also agreed to cease and desist from the use in its said advertisements and advertising matter of any and all statements and pictorial or other representations which may have the capacity and tendency to confuse, mislead, or deceive the public into the belief that the said French couturiers, in the course and conduct of their business, make selections of garments of the said respondent at regular intervals, or that the said couturiers

¹ Published, after deleting name of respondents, to inform the public of those unfair methods and practices condemned by the commission and to establish precedents that will serve to eliminate unfair business methods of interest to the public and injury to competitors.

The digests published herewith cover those accepted by the commission during the period covered by this volume, namely, Mar. 24, 1931, to Dec. 23, 1931, inclusive. Digests of all previous stipulations of this character accepted by the commission—that is, numbers 1 to 784, inclusive—may be found in vols. 10 to 14 of the commission's decisions.

use said garments over which to model their creations, or that selections of the garments of the said respondent are made by said couturiers because of preference therefor and superior quality thereof as to style or otherwise, when in truth such statements and representations are not in accordance with the facts.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 25, 1931.)

786. False and Misleading Designations and Advertising—Men's Shirts, Neckwear, Hosiery, and Underwear.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of men's shirts, neckwear, hosiery, and underwear by mail order, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter of the words and expressions "manufacturer," "manufacturers," "manufacturing," "shirt makers," "factory," "direct from mill," and "representative" and the pictorial representation of a building, either independently or in connection or conjunction each with the other, or with any other word or words, expressions or statements, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said respondent owns, operates, and controls a mill or factory in which are fabricated the products sold and distributed by it in interstate commerce, when such is not the fact; from the use in its advertisements or advertising matter of the word "flannel" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of its products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of wool, when such is not the fact; unless, when said products are composed in substantial part of wool and the word "flannel" is used as descriptive thereof, in which case the word "flannel" shall be immediately accompanied by a word or words printed in type equally as conspicuous as that in which the word "flannel" is printed so as to indicate clearly that said product is not composed wholly of wool; the use in its advertisements and advertising matter of the word "silk" or the word "siletone" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of products which are not composed of silk, the product of the cocoon of the silk worm, so as to

import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of silk, when such is not the fact; unless, when the product is composed in substantial part of silk and the word "silk" is used as descriptive thereof, in which case the word "silk" shall be immediately accompanied by a word or words printed in type equally as conspicuous as that in which the word "silk" is printed so as to indicate clearly that the said products are not composed wholly of silk.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 3, 1931.)

787. **False and Misleading Advertising and Disparagement of Competitor's Product—Stone Burial Vaults.**—Respondent, a corporation, engaged in the quarrying of stone and the fabrication of stone burial vaults and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from advertising or otherwise offering to pay a compensation or reward for the disinterment of burial vaults of competitors; acquiring, keeping on hand, exhibiting, displaying, or otherwise disparaging in any way the burial vaults of competitors and/or calling attention, by means of photographs, advertisements, or advertising matter to their alleged bad condition; soliciting, securing, and availing itself of the cooperation of superintendents of cemeteries and cemetery associations for the conducting of campaigns against its competitors' products; disparaging the value of guarantees given by its competitors on their products, either in advertisements or advertising matter, in letters, or by any other means; making exaggerated and unsupported statements respecting the products of competitors in advertisements or advertising matter, in letters, or by means of posters, photographs, and/or exhibits of any kind or character.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 3, 1931.)

788. **False and Misleading Trade Name and Advertising—Stationery.**—Respondents, copartners, engaged in the printing of stationery and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and

corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "engraving" as part of or in connection or conjunction with their trade name; and from the use of the word "engraving" or "engraved" either independently or in connection or conjunction each with the other, or with any other word or words which import or imply that the products printed and sold by them are the result of impressions made from inked engraved plates, commonly known to the trade and the purchasing public as "engraving," and from the use of the words "engraving" or "engraved" in any other way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the products printed and sold by said copartners in interstate commerce are engraved, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 3, 1931.)

789. Misrepresenting Unit Quantities—Corn Meal and Mixed Feeds.—Respondent, a corporation engaged in the milling of corn meal and mixed feeds and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from selling or from advertising or otherwise offering for sale in interstate commerce any of its said products in containers representing or purporting to contain the standard quantity of such product by weight, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 3, 1931.)

790. False and Misleading Trade Name and Representations and Wrongfully Claiming Patents—Hot Spark Transformer.—Respondent, an individual, engaged in the business of selling and distributing a product under the trade designation "hot spark transformer," and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use of the work "manufacturing" or "mfg." as part of or in connection or conjunction with his trade name, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said respondent is the manufacturer of said product and/or owns, operates, and controls the plant or factory wherein is made or manufactured the product sold and distributed by him in interstate commerce. The said respondent also agreed to cease and desist forever from the use of the words, numbers and dates "owners of patent No. 1323405, patented, December 2, 1919"; so as to mislead and deceive purchasers into the belief that the said product is a patented device and/or covered by a patent bearing the number "1323405", and dated "December 2, 1919," when such is not the fact. Said respondent further agreed to cease and desist from the use in his advertisements and advertising matter of statements and representations to the effect that the said device, when applied to the spark plugs of a motor car engine will burn out or eliminate carbon, increase the fuel mileage, save gasoline from 15 to 40 per cent, do away with ignition trouble, fire any spark plug regardless of condition, eliminate the necessity for new piston rings and reboring cylinders, when such are not the facts; and from the use of any other statements or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the erroneous belief as to the nature of the said product, or that the said product, when used as directed, will accomplish or effect results other than those or in excess of those of which the said product is capable.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 3, 1931.)

791. False and Misleading Designations and Advertising—"Water Revitalizers," "Health Applicators," and "Beauty Aids."—Respondent, a corporation, engaged in the manufacture of products and in the sale and distribution thereof under the trade designations "water revitalizers," "health applicators," and "beauty aids" in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate

commerce purporting to be quotations of observations made by a doctor, or by other eminent authorities so as to import or imply that the said authority or authorities indorse the use of water of about the radioactive strength of that imparted to water by contact with said revitalizer, or of products whose radium content is about that of said health applicators or pads or beauty aids, when such is not the fact. The said company also agreed to cease and desist from the use of any and all statements and representations in its said advertisements and advertising matter having the capacity or tendency to convey the belief that water is caused to become radioactive by the immersion therein of the said water revitalizer so as to charge such water with special health giving properties and therapeutic value, when such is not the fact. Said respondent further agreed to cease and desist from the use of any and all statements and representations in its said advertisements and advertising matter, or in any way which do not truthfully represent and describe its products and/or the results obtained from the use of said products.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 6, 1931.)

792. False and Misleading Advertising—Animal Remedies.—Respondent, an individual, engaged in the sale and distribution of alleged animal remedies in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in her advertisements and advertising matter distributed in interstate commerce of any word or words, statements, or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the Department of Agriculture or any other department, bureau, or branch of the United States Government has indorsed or approved the said products, or any of them, sold and distributed by her in interstate commerce, when such is not the fact. Said respondent further agreed to cease and desist from the use of the words "worms," "wormer," or "worming" either independently or in connection or conjunction each with the other, or with any other word or words, statement, or representation so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products, or any of them, are or is an effective remedy in the treatment of all types of worms, when such is not the fact; unless, when the product is adapted as a treatment for a particular type or species of worm and the word "worm"

or "wormer" or "worming" is used to designate and describe the same, the said designating and descriptive word shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said designating word is printed so as to indicate clearly the particular type or species of worm for which the said product is adapted to be used as a treatment. The said respondent also agreed to cease and desist from the use of any words, statements, or representations which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products, or any of them, are or is an effective treatment or cure for "running" or "barking" fits, "sore mouth," or "black tongue," or other animal disease, when such is not the fact.

Respondent also agreed that if she should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against her in the trial of the complaint which the commission may issue. (April 6, 1931.)

793. False and Misleading Advertising and Representations—Men's Ready-Made Clothing.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of ready-made clothing for men, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from stating and representing, by advertisements or advertising matter, or through its agents and solicitors that the suits offered for sale and sold and distributed by it in interstate commerce are made to order, or tailor made, when such is not the fact; that the prices at which it offers and sells its products is a special price, or that it sells two suits for the price of one, or gives one suit free, as a special advertising offer, or in anticipation of the establishment of a branch in a given locality, when such price and such offer are not "special" but are the usual price and terms made in the regular course of its business; that it is a manufacturer, or that it has a factory for the manufacture of the products which it sells, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 8, 1931.)

794. False and Misleading Advertising—Automobile Burglar Alarms.—Respondent, a corporation, engaged in the sale and distribution of an alleged burglar alarm for attachment to or use in connection with automobiles in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise

engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from statements and pictorial or other representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a vocal one capable or adapted to actually emit words of warning, when such is not the fact. Said respondent also agreed to cease and desist forever from the use in its advertisements or advertising matter distributed in interstate commerce of the statement "I can hold this offer open only for 10 days," or of any other statement or representation that acceptance of the offer is limited to a definite period of time, when such offer is not limited to acceptance within 10 days or other designated period of time, but is a continuing offer unlimited as to time.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 15, 1931.)

795. False and Misleading Advertising—"Radioactive" Devices.—Respondent, an individual, engaged in the manufacture of an article or product alleged to impart radioactivity to water in which it is immersed so as to render such water of therapeutic value, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his product in interstate commerce agreed to cease and desist forever from the use in his advertisements and advertising matter, or in any way, of statements and representations having the capacity or tendency to convey the belief that water is caused to become radioactive by the immersion therein of said product so as to charge such water with special health-giving properties and therapeutic value, when such is not the fact. Respondent also agreed to cease and desist from the use in his advertisements or advertising matter, or in any way, of statements purporting to be quotations from observations of professors, doctors, or other authorities so as to import or imply that such authorities indorse the use of radioactive water of about the strength of that produced in water by said product, when such is not the fact. Respondent further agreed to cease and desist from the use of any and all statements and representations in his said advertisements and advertising matter, or in any other way, which do not truthfully

represent and describe the said product and/or the results obtained from the use of said product.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 15, 1931.)

796. Resale Price Maintenance and Exclusive and Tying Contracts—Electrical Appliances.—Respondent, Thor Pacific Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal place of business located in the city of Los Angeles, in the State of California.

It has been for more than one year last past engaged in the sale and distribution of the Thor line of electrical appliances in commerce between and among various States of the United States. It caused said products, when sold, to be shipped from its place of business and/or warehouses located in the State of California to purchasers thereof located in a State or States other than the State of California. In the course and conduct of its business, Thor Pacific Co. was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products in interstate commerce.

In the course and conduct of its business Thor Pacific Co. sold and distributed its products at wholesale to retail dealers located in various States of the United States, the said dealers being required to enter into contracts entitled "Thor dealer's selling agreement." The said agreement provided for the signature of said Thor Pacific Co. and the dealer, and "in order to preserve good will by avoiding disputes" set forth the conditions agreed upon to govern the relationship of the said parties. One of the conditions set forth in said agreement was captioned "prices" and explained as follows: "List prices of all Thor machines are shown on list price. Discounts are calculated on these list prices, which are the cash retail prices. Dealers are to adhere strictly to the printed list price at all times. Dealers will be notified promptly in case of changes, which it is agreed will be placed into effect immediately on all sales made after receipt of our notification from the factory." As means to enforce such condition of said agreement, the said Thor Pacific Co. threatened to refuse and did refuse to sell its products to a dealer or dealers who failed to maintain resale prices suggested by the said company, and continued to refuse and did refuse to sell its products to a dealer or dealers who failed to maintain resale prices suggested by the said company, and continued to refuse to sell products to such offender until receipt of promises and assurances from said offender that it would abide by the condition as set forth in the agreement aforesaid with reference to the maintenance

of suggested resale prices. The said agreement also contained as part thereof the following: "So long as this agreement remains in effect the dealer will not enter into agreement with any other company covering the sale of washing or ironing machines in the territory described by the Thor Pacific Co.," with the purpose and effect of preventing dealer customers, parties of the said agreement, from handling any make of washing machine or ironer other than those supplied by the said Thor Pacific Co.

It is further stipulated and agreed, by and between the said C. W. Hunt, chairman of the Federal Trade Commission, and Thor Pacific Co., that Thor Pacific Co., in the course and conduct of its business, agreed to cease and desist forever from the following cooperative methods:

(a) Entering into contracts with dealers whereby said dealers, or any of them, are obligated and/or required to maintain or adhere to any system of resale prices fixed or established by said Thor Pacific Co.;

(b) Seeking and securing agreements, promises, or understandings from said dealers to the effect that said dealers will cooperate with said Thor Pacific Co. in the maintenance of any system of resale prices established by said company;

(c) Refusing and/or threatening to refuse to sell to any dealer because of said dealer having failed to cooperate with said Thor Pacific Co. in the maintenance of resale prices fixed by said company;

(d) Seeking and securing cooperative promises and assurances from offending dealers that they will maintain said resale prices as a condition precedent to further supplying them with products;

(e) Seeking to secure and securing by any means whatever the cooperation of its dealer customers in maintaining or enforcing any system of resale prices;

(f) Seeking and securing agreements, promises, or understandings from, or entering into contracts with, dealer customers whereby said dealer customers are required to sell products of the said Thor Pacific Co. only at the prices fixed thereon by the said company and/or whereby said dealer customers agree not to sell the products of any competitor of said Thor Pacific Co., and to observe said agreement.

It is further stipulated and agreed, by and on behalf of the commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the names of the parties stipulating, shall be released for publication and become a part of the public record. (April 24, 1931.)

797. False and Misleading Trade Name, Brands, or Labels and Advertising—Trisodium Phosphate.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of trisodium phosphate under the trade name and brand of "mineral soap"

which products are used as water softeners, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "soap" as a trade name for his products and/or in advertising, labeling, and branding said products either alone or in combination with any other word or words, or in any way which may confuse, mislead, or deceive purchasers into the belief that said products are soaps, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 24, 1931.)

798. **Exclusive and Tying Contracts—Random Yarn Dyeing Machines.**—Respondent, a corporation, engaged in the manufacture of machines used for the random dyeing of yarns and in the leasing of said machine to manufacturers and/or sellers of woolen, cotton, and rayon underwear, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the lease of and leasing its machines in interstate commerce, agreed to cease and desist forever from making, enforcing, attempting to enforce, or threatening to enforce any lease of its machinery for use within the United States or any Territory thereof or the District of Columbia, or any insular possession or other place under the jurisdiction of the United States on the condition, agreement, or understanding that the lessee thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor where the effect of such lease may be to substantially lessen competition or tend to create a monopoly in any line of commerce. The aforesaid corporation further agreed to vacate or cancel any and all such restrictive clauses as may at this time be contained in leases now in effect and to notify said lessees that such clauses are without force and effect.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1931.)

799. **False and Misleading Trade Name and Brands or Labels—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals,

firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with the word "rayon," or with any other word or words, or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of silk, or are composed of silk in substantial quantity, when such is not the fact; unless, when said products are composed in substantial part of silk and the word "silk" is used as a trade brand or designation for said products, in which case the said word "silk" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "silk" is printed so as to indicate clearly that said products are not composed wholly of silk and which will otherwise properly and accurately represent, define and describe said products so as to indicate clearly that the same are composed in part of a material or materials other than silk.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1931.)

800. **False and Misleading Representations—Beads.**—Respondent, a corporation engaged in the importation, sale and distribution in interstate commerce of novelties, including beads, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "amber" either independently or in connection with any other letter or letters, word or words so as to import or imply that the said product so designated is amber when such is not the fact; and from the use of the word "amber" or any colorable variation or derivative thereof in any way which may have a tendency to confuse, mislead, or deceive purchasers into the belief that said product is made of amber, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1931.)

801. False and Misleading Advertising and Representations—Silverware and Coupons and Advertising Matter.—Respondents, copartners, engaged in the sale and distribution in interstate commerce of coupons and advertising matter for use by retailers in connection with the sale of their merchandise, and in the redemption of such coupons by exchanging therefor various articles of silverware, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in soliciting the sale of and selling their commodities in interstate commerce agreed to cease and desist from stating and representing that William A. Rogers (Ltd.), is conducting an advertising campaign, or that said company has any connection with said copartnership, when such is not the fact; that the products which they distribute in exchange for coupons are free, when such is not the fact; that the silverware which they distribute is the highest quality or best grade of Rogers silverware, when such is not the fact, and from the use of any of the foregoing methods, or of any other similar methods in interstate commerce whereby retailers or their customers may be confused, misled, or deceived respecting the true nature of the status and sales plan of said copartners.

Respondents also agreed that if they ever resume or indulge in the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 24, 1931.)

802. False and Misleading Trade Name, Brands, or Labels and Advertising—Lubricating Oils.—Respondent, an individual, engaged in the sale and distribution of lubricating oils in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling her products in interstate commerce, agreed to cease and desist forever from: (a) The use of the word "refining" as a part of her trade name in advertising, labeling, branding, and selling her products in interstate commerce either alone or in combination with any other word or words, or in any way which may confuse, mislead, or deceive purchasers into the belief that she owns, operates, or controls a refinery wherein the products, or any part thereof, which she sells and distributes in interstate commerce are refined; (b) the use of the word "castor" either independently or in connection with the word "oil" or in combination with any other word or words in advertising, branding, labeling, or other-

wise designating any of her products so as to import or imply that the said product is made of castor oil or contains castor oil in substantial quantity, when such is not the fact; (c) stating and representing, by advertisements or otherwise, that the product heretofore sold and distributed under the trade name and brand of "aero-castor" is a scientific blend of castor and mineral or other oil, when such is not the fact; (d) the use of exaggerated claims and representations respecting the results to be obtained by the use of said product.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1931.)

803. False and Misleading Representations—Beads.—Respondent, a corporation, engaged in the importation, sale, and distribution of novelties, including beads, in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "amber" either independently or in connection with any other letter or letters, word or words, so as to import or imply that the said product so designated is amber, when such is not the fact; and from the use of the word "amber" or any colorable variation or derivative thereof in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said product is made of amber, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 29, 1931.)

804. False and Misleading Brands or Labels and Advertising—Overalls.—Respondent, a corporation, engaged in the business of manufacturing overalls and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "shrunk" or "shrunken" either independently or in connection or conjunction with any other word or words in its advertisements or as a brand or label for its products in such a way as to import or imply that the said material of which the products were made or manufactured

was entirely free from further shrinkage when subjected to the usual washing or laundry process, and from the use of any representation or statement descriptive of its products sold in interstate commerce so as to mislead, confuse, or deceive the purchasing public into the belief that said products were manufactured from cloth that was entirely free from further shrinkage when made into overalls and subjected to the usual washing and laundry process.

Respondent also agreed that should it ever resume or indulge in any of the methods in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 29, 1931.)

805. False and Misleading Advertising—Radio Receiving Sets.—

Respondent, a corporation, engaged in the manufacture of radio receiving sets and parts therefor and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever in its advertisements and advertising matter circulated in interstate commerce, from making statements and misrepresentations as herein set forth, or any statement suggesting or implying, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the prices which it quotes for its radio receiving sets include an outfit of tubes with each set, when such is not the fact; and from advertising, stating and representing its prices for its radio sets where such price does not include an outfit of tubes, without at the same time disclosing in type equally as conspicuous as that in which the price is printed and in close proximity thereto the fact that an outfit of tubes is not included in such price, or that the cost of the necessary tubes is to be added to the price stated.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 1, 1931.)

806. False and Misleading Advertising—Casters.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of hardware, including casters, at wholesale, principally by mail orders, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from holding

out, stating and representing in its catalogues or other advertisements and advertising matter circulated in interstate commerce, that it has the "Indian glide" caster in stock and is prepared to fill orders for the same, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the fact may be used in evidence against it in the trial of the complaint which the commission may issue. (May 8, 1931.)

807. False and Misleading Corporate Name and Advertising—Correspondence Course.—Respondent, an individual, engaged in the sale and distribution of a correspondence course in the science of secret service intelligence, in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his course of instruction in interstate commerce, agreed to cease and desist forever from the use of the letters "U. S." as a part of or in connection with the trade name under which he carries on his business, either alone or in connection or conjunction with any other words, letters, phrases, or pictorial representations, in advertisements, pamphlets, stationery or otherwise so as to import or imply that said respondent is connected with the Government of the United States, or that his course of instruction is conducted in accordance with the requirements of or under the supervision of any official of the United States Government.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 8, 1931.)

808. False and Misleading Trade Name and Advertising—Muskrat Hides, Skins, or Pelts.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of hides, skins, or pelts of muskrats for use and used in the manufacture of garments, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the words "Hudson" and "seal" as part of or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said products sold and distributed in interstate commerce by the said respondent are the skins, hides, or pelts of the seal.

Respondent also agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce of the word "seal" either independently or in connection or conjunction with the word "Hudson" or with any other word or words, or in any way, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products sold and distributed by it in interstate commerce are the skins, hides, or pelts of the seal, when such is not the fact. The said corporation also agreed to cease and desist forever from the use in its said advertisements and advertising matter of the phrases "from fur ranch to wearer," "we raise the animals to lower the price," and "might we suggest that you buy direct" either independently or in connection or conjunction each with the other, or with any other phrase or phrases, word or words, or in any other way so as to confuse, mislead, or deceive purchasers into the belief that the products sold or offered for sale in interstate commerce are or have been raised, farmed, and pelted on a ranch or ranches which the said company owns, operates, and controls, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 8, 1931.)

809. **False and Misleading Brands or Labels and Advertising—Barber-shop and Beauty-parlor Supplies.**—Respondent, a corporation, engaged in the importation and sale at wholesale and retail of supplies for use in barber shops and beauty parlors in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed, in advertising and labeling its product, to cease and desist forever from the use of the words "tempered," "special steel," and/or "forged steel" either independently or in connection with each other, or with any other similar words or phrases which may have the tendency and effect to confuse, mislead, or deceive purchasers into the belief that the product so advertised, branded, labeled, and represented is made of forged steel, or that the same is tempered or specially hardened in any way, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 8, 1931.)

810. **False and Misleading Advertising—Electric Clocks and Master-clock Equipment.**—Respondent, a corporation, engaged in the manufacture of electric clocks and master-clock equipment, and in the sale

and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from making statements and representations in its advertisements or advertising matter circulated in interstate commerce to the effect that its master clocks are the only master clocks used by power companies to furnish regulated time, and from the use of any statements and representations which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that its master clocks are the only master clocks used by power companies to furnish regulated time, when such is not the fact; and respondent also agreed to cease and desist from representing in its advertisements and other printed matter that its master clocks control generator speeds, if such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 8, 1931.)

811. False and Misleading Advertising—Drawing Instruments.—Respondents, copartners, engaged in the sale and distribution of drawing instruments in interstate commerce, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from (a) the use of the word "manufacturers" in advertisements and advertising matter circulated in interstate commerce, either alone or in combination with any other word or words, or in any way which may have the tendency and effect to confuse, mislead, and deceive purchasers into the belief that said respondents own, control or operate a factory wherein the products sold by them are made or manufactured, when such is not the fact; and (b) the use in advertisements or advertising matter, circulated in interstate commerce, of the statement or representation that their products are made of cold rolled German silver and tool steel, or of any other similar expressions which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said products are made of German silver and/or of tool steel, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 11, 1931.)

812. **False and Misleading Advertising—Headache Powders.**—Respondents, copartners, engaged in the manufacture of headache powders and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist forever from the use in their advertisements and advertising matter, or in any other way, of any and all statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is a remedy or cure, or possesses such therapeutic value so as to be properly represented, designated or referred to as a remedy for rheumatism, sciatica, female pains or other basic disease, when such is not the fact. The said copartners also agreed to cease and desist from the use of the word "safe" and the statement "it does not depress the heart" either independently or in connection or conjunction each with the other, or with any other word or words, or in any way, in their advertisements or advertising matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is safe or harmless and/or will not act as a heart depressant, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 11, 1931.)

813. **Resale Price Maintenance—Tea.**—Salada Tea Co. (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal place of business located in the city of Boston, in the State of Massachusetts. It has been engaged for more than one year last past as an importer and packer of tea and in the sale and distribution of said product in commerce between and among various States of the United States, causing said product, when sold, to be shipped from its place of business in the State of Massachusetts to purchasers thereof located in a State or States other than the State of Massachusetts. In the course and conduct of its business, Salada Tea Co. (Inc.), was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

In the course and conduct of its business, Salada Tea Co. (Inc.), sold and distributed its product to jobbing and retail trade located in various States of the United States, and with reference to its said trade

located in those States known as the New England States, the said company adopted and used a system involving the cooperation of the said trade in the maintenance and enforcement of prices established by it and at which said product should be sold by such trade. In or about January of 1931, Salada Tea Co. (Inc.), caused it to be generally known by means of circular letters that it would require its jobbing or other trade located in the New England States to cooperate with it in maintaining resale prices suggested by it, and as means of effecting obedience to its said system the said company distributed lists setting forth the resale prices to be maintained by its jobbing and retail trade, sought and obtained agreements, promises and assurances from its jobbing trade that said trade would cooperate in maintaining its suggested resale prices and sell only to the retail trade.

It is further stipulated and agreed, by and between the said C. W. Hunt, chairman of the Federal Trade Commission, and Salada Tea Co. (Inc.), that Salada Tea Co. (Inc.), hereby agrees to cease and desist forever from the following cooperative methods: Seeking and obtaining the cooperation of its jobbing and/or retail trade in the maintenance of a resale price policy suggested by said company; seeking and obtaining agreements, promises, and assurances from its jobbing and/or retail trade that said trade will cooperate in the maintenance of its suggested resale price policy; directly or indirectly enforcing or attempting to enforce, or putting into effect, by cooperative methods, any system for the maintenance of resale prices established by it.

It is further stipulated and agreed, by and on behalf of the commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the name of the respondent stipulating, shall be released for publication and become a part of the public record. (May 11, 1931.)

814. **False and Misleading Advertising—Lamps and Fixtures.**—Respondents, copartners, engaged in the manufacture of a special line of lamps and of fixtures for the same, and in the sale and distribution of said products in interstate commerce, and in competition with other copartners, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents also agreed in soliciting the sale of and selling their products in interstate commerce to cease and desist forever from stating or representing in advertisements circulated in interstate commerce, or in any other way that they are the owners of a patent or patents applying to lenses alone instead of upon a combination of elements including a lense, when such is not the fact; and that they

are the owners of a registered trade-mark upon the word "daylite" as applied to their products, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 12, 1931.)

815. **False and Misleading Advertising—Stationery.**—Respondent, a corporation engaged in the business of printing stationery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "engraved" and/or "engraving" in its advertisements and advertising matter circulated in interstate commerce; and from the use of the words "engraved" and/or "engraving" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products printed and sold by the said respondent in interstate commerce are engraved, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 11, 1931.)

816. **False and Misleading Brands or Labels and Advertising—Typewriter Ribbons.**—Respondent, a corporation, engaged in the manufacture of office supplies, including typewriter ribbons, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "silk" in branding, marking, advertising, or representing its typewriter ribbons shipped in interstate commerce, either alone or in combination with any other word or words, or in any way which may confuse, mislead, or deceive purchasers, into the belief that said products are made of silk, the product of the cocoon of the silkworm, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (May 22, 1931.)

817. False and Misleading Trade Names, Brands, and Advertising—Dental Supplies.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of dental supplies, including a type of wheel used by the dental profession to grind teeth, fillings therefor, and the like, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "heatless" in his advertising matter or as a trade brand or designation for his said products so as to import or imply that said products are made by Mizzy (Inc.), when such is not the fact; and from the use of the word "heatless" either independently or in connection or conjunction with any other word or words or in any way in his advertising matter or as a trade brand or designation for his said products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are the products of the said Mizzy (Inc.), when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 22, 1931.)

818. Resale Price Maintenance—Ginger Ale Extract.—James Vernor Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal place of business located in the city of Detroit, in the State of Michigan. It has branch offices or factories at Niagara Falls and Buffalo, in the State of New York, at Cleveland, Cincinnati, Columbus, Toledo, and Dayton, in the State of Ohio, and at Pontiac and Flint in the State of Michigan. It has been engaged for more than one year last past in the manufacture of ginger ale extract for use in the preparation of draft ginger ale, and in the sale and distribution of said product in commerce between and among various States of the United States. It has caused said product, when sold, to be shipped from its place of business in the State of Michigan and/or from one or more of its factories in the States of Ohio and New York to purchasers thereof located in a State or States of the United States other than the State wherein shipment originated. In the course and conduct of its business, James Vernor Co. was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

In the course and conduct of its business James Vernor Co. has sold the product of its manufacture to retail and other trade located in various States of the United States, and in the course of its business adopted a system involving the cooperation of the said trade for the maintenance and enforcement of resale prices established by it and at which its product should be sold by said trade, and which system the said company caused to be maintained and enforced. The said system included the use of certain written contracts entered into by said company with so-called "county agents," individual soda fountain operators, lunch room owners and the like, and which contracts contained among other provisions, the following: "He shall sell same only under the name of 'Vernor's Ginger ale' at 5 cents per 6-ounce glassful and 10 cents per 12-ounce glassful" and "the permit may be immediately canceled by the James Vernor Co. if the undersigned should fail in any respect to perform in accordance with the above terms" or "Vernor's ginger ale on draft * * * shall be offered for sale to the general public * * * at 10 cents per 12-ounce glassful or 5 cents per 6-ounce glassful," "The second party shall establish * * * prices for dealers * * * and shall endeavor to maintain retail prices" and "if the first party should fail in any respect to perform according to the terms of this agreement, the second party may at its option * * * terminate this entire agreement." As means of effecting obedience to its system, the said James Vernor Co. solicited and obtained, through the medium of its salesmen and by other means, promises of cooperation from customers that they would maintain resale prices suggested by said company, and the said company threatened to and did withhold its products from customers who failed or refused to maintain its suggested prices.

It is further stipulated and agreed, by and between the said C. W. Hunt, chairman of the Federal Trade Commission and James Vernor Co., that James Vernor Co., in soliciting the sale of and selling its product in interstate commerce, hereby agrees to cease and desist forever from the use of any of the following cooperative methods: (a) Entering into contracts with its customers by virtue of which contracts the said customers are required to and do cooperate with said company in the maintenance of resale prices established by it; (b) seeking and obtaining from the retail or other trade promises or assurances of said trade that it will cooperate with said company in the maintenance of any system of resale prices suggested by said company, and threatening to withhold or withholding its product from customers who fail or refuse to maintain said suggested resale prices; (c) directly or indirectly carrying into effect by cooperate methods any system whatsoever for the maintenance of resale prices established or suggested by said company.

It is further stipulated and agreed, by and on behalf of the commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the name of the respondent stipulation, shall be released for publication and become a part of the public record. (June 1, 1931.)

819. False and Misleading Advertising—Axes, Hatchets, and Half Hatchets.—Respondent, a corporation, engaged in the business of selling and distributing merchandise by mail order, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its merchandise in interstate commerce, agreed to cease and desist forever from the use in its catalogs distributed in interstate commerce among customers and prospective customers of statements and representations that its axes, hatchets and/or half hatchets are made of crucible steel, when such is not the fact; and from statements and representations that its axes are made of hardened steel and/or that they will not batter and mash, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 3, 1931.)

820. False and Misleading Brands or Labels and Advertising—Wooden Manicure Sticks.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of manicurist's supplies, including wooden manicure sticks, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "orange" either independently or in connection or conjunction with any other word or words, in labeling, branding, advertising, and representing its manicure sticks so as to import or imply the same are made of the genuine wood of the orange tree; and from the use of the word "orange" in any way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that said product is made of the genuine wood of the orange tree, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (June 5, 1931.)

821. **False and Misleading Brands or Labels and Advertising—Wooden Manicure Sticks.**—Respondent, a corporation, engaged in the manufacture of manicurist's supplies, including wooden manicure sticks, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "orange" either independently or in connection or conjunction with any other word or words, in labeling, branding, advertising, and representing its manicure sticks so as to import or imply the same are made of the genuine wood of the orange tree; and from the use of the word "orange" in any way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that said product is made of the genuine wood of the orange tree, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 5, 1931.)

822. **False and Misleading Trade or Corporate Name, Brands, or Labels, Business Status and Advertising—Enamel Ware and Specialties for use in Hospitals and Sick Rooms.**—Respondent, a corporation engaged in the sale and distribution in interstate commerce of enameled ware and specialties for use in hospitals and sick rooms, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the words "stamping" and/or "enameling" as a part of its corporate or trade name in soliciting the sale of or selling its products; and from the use of said words "stamping" and/or "enameling" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said corporation owns, controls, or operates a mill or factory wherein the products which it sells are fabricated, when such is not the fact; the use in advertisements or advertising matter, on labels or otherwise, of statements and representations that the products which it sells and distributes in interstate commerce are manufactured by it, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 5, 1931.)

823. **False and Misleading Corporate Name, Business Status, Brands, or Labels and Advertising—Proprietary Drug.**—Respondent a corporation, engaged in the sale and distribution of a proprietary drug in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of a corporate or trade name containing the word "laboratories" in soliciting the sale of and selling its product in interstate commerce; and from the use of the word "laboratories" as part of or in connection with its corporate or trade name in advertisements or advertising matter distributed in interstate commerce; and from the use of the word "laboratories" either independently or in connection or conjunction with any other word or words, or in any way on its labels or in its catalogs, circulars or other printed matter distributed in interstate commerce so as to import or imply or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said respondent owns, controls or operates a plant or laboratory wherein are manufactured or made the product sold and distributed by it in interstate commerce, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 5, 1931.)

824. **False and Misleading Unit Quantities, Labels, and Advertising—Gasoline.**—Respondent, a corporation, engaged in the sale and distribution of gasoline in export trade from the United States to foreign countries, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its gasoline products in commerce, as defined by the Federal Trade Commission act, agreed to cease and desist forever from the use of the marking "2/5" either independently or in connection or conjunction with any word or words or in any other way in its invoices or advertising matter or on its labels or stencils affixed or stamped on its tins, cans, or containers of product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that each of said tins, cans, or containers contains 5 full gallons

(United States measure) of said product, when such is not the fact; and the said respondent further agreed to cease and desist from the use of standard size containers of 5 gallons or other standard measure so as to mislead, deceive, or confuse purchasers into the belief that each said container actually contains 5 full gallons or other amount of gasoline indicated by such standard size container when such is not the fact; unless, when such container is used and contains less than 5 gallons or other amount of gasoline, in which event said container shall have printed thereon or affixed thereto some suitable word, phrase, statement, numeral, or marking so as to indicate clearly and conspicuously the actual amount or quantity of gasoline which has been placed within said containers; and the said company also agreed to cease and desist from selling and/or shipping packaged gasoline in any way in commerce as defined by the Federal Trade Commission act, which may have the capacity or tendency to confuse, mislead, or deceive the purchaser thereof into the belief that said packages contain an amount or quantity of gasoline other and less than is actually contained in the said packages; and the said company also agreed to cease and desist from the sale and distribution of its product in any way so as to disparage the goods, wares, or merchandise exported from the United States to foreign countries.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

825. False and Misleading Unit Quantities, Labels, and Advertising—Gasoline.—Respondent, a corporation, engaged in the sale and distribution of gasoline in export trade from the United States to foreign countries, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its gasoline products in commerce as defined by the Federal Trade Commission act, agreed to cease and desist forever from the use of any marking, indicating quantity, either independently or in connection or conjunction with any other word or words or in any way in its invoices or advertising matter of whatsoever character which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that each of the containers of product contains 5 full gallons (United States measure) of said product when such is not the fact; and the said respondent further agreed to cease and desist from the use of standard-size containers of 5-gallon or other standard measure so as to mislead, deceive, or confuse purchasers into the belief that each said container actually contains 5 full gallons or other amount of gasoline

indicated by such standard-size container, when such is not the fact; unless, when such container is used and contains less than 5 gallons or other amount of gasoline, in which event said container shall have printed thereon or affixed thereto some suitable word, phrase, statement, numeral or marking so as to indicate clearly and conspicuously the actual amount or quantity of gasoline which has been placed within said containers; and the said respondent also agreed to cease and desist from selling and/or shipping packaged gasoline in any way in commerce as defined by the Federal Trade Commission act, which may have the capacity or tendency to confuse, mislead, or deceive the purchaser thereof into the belief that said packages contain an amount or quantity of gasoline other and less than is actually contained in the said packages; and the said company also agreed to cease and desist from the sale and distribution of its product in any way so as to disparage the goods, wares, or merchandise exported from the United States to foreign countries.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

826. False and Misleading Advertising—Fish.—Respondent, a corporation, engaged in the sale and distribution of fresh and frozen fish in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter of the word "catfish" or "cat" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of said product, which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is that species of product known as catfish, when such is not the fact. Said respondent further agreed to cease and desist from the use of the word "trout" either independently or in connection or conjunction with any other word or words or in any way as descriptive of its product which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is that species of product known as trout, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

827. False and Misleading Brands or Labels and Advertising—Hair Preparation and Face Cream.—Respondent, a corporation engaged in the manufacture of two preparations and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its hair product in interstate commerce agreed to cease and desist forever from the use on its brands or labels affixed to the product or in its advertisements or advertising matter distributed in interstate commerce of any and all statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product will restore faded, streaked, or gray hair to its natural color or will reproduce or bring back the natural color of such hair of whatever type, shade, or color, or that the said product is not a dye and does not impart an artificial color to the hair, or that it stops or overcomes falling hair and is a positive corrective for dandruff and itching scalp and generally cures alopecia (baldness), or that it is absolutely harmless or is wholly safe or that it preserves and grows hair and prevents all hair diseases, or that it includes only the extracts of potent and harmless herbs, when such is not the fact. The said corporation, in soliciting the sale of and selling its face cream in interstate commerce also agreed to cease and desist forever from the use in its advertisements and advertising matter of any and all statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its said product, when applied to the skin, will effect a rejuvenation of such skin or a revitalization of the complexion or the removal of wrinkles, when such is not the fact. The said corporation, in soliciting the sale of and selling its said products in interstate commerce, further agreed to cease and desist from the use of any and all statements and representations in its advertisements and advertising matter or in any other way which may have the capacity or tendency to mislead or deceive purchasers into an erroneous belief as to the therapeutic, corrective, or remedial effects of its said products or either of them.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

828. False and Misleading Advertising and Business Status—Bronze Powder.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of bronze powders, and in competition with other corporations, individuals, firms, and partnerships

likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from advertising, stating, or representing that it is the manufacturer of such powders; and from the use of the word "manufacturers" in its advertisements, advertising matter, letterheads, billheads, in commercial lists, or in any other way so as to import or imply, or which may confuse, mislead, and deceive purchasers into the belief that it is the manufacturer of said products, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

829. False and Misleading Brands or Labels and Advertising—Manicure Sticks.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of toilet requisites, including manicure sticks, and in competition with other corporations, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "orangè" either independently or in combination with any other word or words in labeling, branding, advertising, and representing its manicure sticks, unless and until the same are made of the genuine wood of the orange tree; and from the use of the word "orange" in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said product is made of the genuine wood of the orange tree, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

830. False and Misleading Advertising—Bronze Powder.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of bronze powders, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from advertising, stating, and/or representing that it is a manufacturer of bronze powders on its letterheads or other advertisements and advertising matter circulated in interstate commerce; and from the use of the word "manufacturers" either independently or in combination with any

other word or words, or in any way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it is the manufacturer of the products which it sells and distributes in interstate commerce; or until such time as it does actually own, operate, and control a mill or factory wherein such products are manufactured.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

831. False and Misleading Advertising and Testimonials—Proprietary Medicines.—Respondent, a corporation, engaged in the manufacture of proprietary medicines and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in advertisements and advertising matter circulated in interstate commerce of any and all testimonials which are not the genuine, correct, and duly authorized opinions of the author or authors; and if a monetary or other valuable consideration has been paid for a testimonial, then said respondent shall publish or cause to be published, along with such advertisements and in an equally conspicuous manner, the fact that such testimonial has been secured for a consideration; any and all testimonials the wording of which has been altered in such a way as materially to change their sense and meaning, and/or so as materially to misquote the writers thereof; any and all testimonials by users of respondent's product in the form of a powder in connection with advertisements of said product in liquid form in such a way as to have a tendency to confuse, mislead, and deceive purchasers into the belief that a form of said product other than the true one is meant and referred to; statements and representations that its liquid product has tonic properties based on the presence therein of nux vomica, when such is not the fact; statements and representations that its liquid product is vitaminized, when the same does not contain all the known vitamins in significant amounts; statements and representations that its liquid product conforms to the principles of "nature healing" methods, as represented by Rev. Sebastian Kneipp.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1931.)

832. False and Misleading Brands or Labels and Advertising—Soaps.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of soaps, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from advertising, stamping, labeling, or describing his soap products with any false, fictitious, or misleading statements concerning the price or value of the same; using the words "Dr. Carney" or any other fictitious name in advertising, labeling, or describing his soap products, and from stating or representing, directly or indirectly, that a physician was connected with the preparation of the formula or the manufacture of his soaps, when such is not the fact; from the use of the word "antiseptic" to designate, describe, represent or refer to his "dermagene" brand of soap, or in any way which may confuse, mislead, or deceive purchasers into the belief that said brand of soap contains antiseptic properties other than or different from those usually found in cocoanut-oil soaps, when such is not the fact; advertising, stating, or representing in any way, directly or indirectly, that his "Cu-Rene" brand of soap contains olive oil, that the same contains no acids or possesses the soothing qualities of castile soap, and that it is especially adapted for use on tender skins, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 10, 1931.)

833. False and Misleading Advertising—Spring Water.—Respondent, a corporation, engaged in the business of bottling water from a natural spring located about 2 miles from the town of McDavid and 30 miles north of Pensacola, in the State of Florida, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever in its advertisements and advertising matter from making any claims respecting the medicinal or curative properties of said product other or greater than those usually belonging to water which is mildly alkali and mildly laxative; and/or from any other advertisements and advertising which does not truthfully represent and describe said product or the results obtained from its use.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 12, 1931.)

834. False and Misleading Advertising—Automobile Parts.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of automobile parts, including axle shafts, worms, gears, brake drums, etc., certain of which it manufactures and certain others of which it purchases and finishes, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from stating and representing in its advertisements and advertising matter circulated in interstate commerce that the axle shafts sold and distributed by it are of its own manufacture, when such is not the fact; that it uses the "Brinnel (or Brinell) test," when such is not the fact, and that its products are manufactured from special alloy, or nickel-chromium steel, when only a portion thereof are manufactured from such steel.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 19, 1931.)

835. False and Misleading Advertising—Lead Pencils.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of lead pencils, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in advertisements and advertising matter circulated in interstate commerce of the word "factory" and/or "you save all middlemen's expense and profits" either independently or in connection with each other or with any other word or words, or in any way which may import or imply, or which may confuse, mislead, and deceive purchasers into the belief that said respondent owns, controls, and operates a factory wherein the products sold by it are manufactured, when such is not the fact; respondent also agreed to cease and desist from the use of the words "highest possible award for advertising pencils medal of honor" or any other or similar words or expressions which import or imply or which may confuse, mislead, and deceive purchasers into the belief that said award was "the highest possible award" and given for quality, instead of a diploma of honorable mention for a display of advertising pencils.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 19, 1931.)

836. False and Misleading Advertising—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in advertisements and advertising matter of the words "antinicotine" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply, or which may confuse, mislead or deceive purchasers into the belief that such products are free from nicotine, when such is not the fact; from stating and representing in advertisements and advertising matter circulated in interstate commerce that the cure and preparation of the tobacco from which his cigars are made requires from two to four years or more, and that almost the entire nicotine content is extracted, when such is not the fact; from stating and representing in advertisements and advertising matter that his cigars contain only a minimum of nicotine, or an amount less than the average content of other brands for which no claim as to denicotinization is made by the manufacturers, when such is not the fact; from stating and representing in advertisements and advertising matter circulated in interstate commerce that his products can be used, regardless of quantity, without biting tongue, throat irritations and/or any other similar representations so as to import or imply that said products can be used regardless of quantity without such inconvenience or danger, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 19, 1931.)

837. False and Misleading Corporate Name—Proprietary Medicines.—Respondent, an individual, engaged in the sale and distribution of proprietary medicines in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his products in interstate commerce agreed to cease and desist from the use of the

word "laboratory" as part of his trade name or in any other way in connection or conjunction with his advertisements or advertising matter, or on labels circulated in interstate commerce so as to import or imply or which may confuse, mislead, or deceive purchasers into the belief that said respondent owns, controls, and operates a laboratory, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 26, 1931.)

838. **False and Misleading Advertising—Rugs.**—Respondent, a corporation, engaged in the manufacture of certain of its rugs and in the sale and distribution of same in interstate commerce, and some of which rugs it made or fabricated from old carpets, rugs, clothing, and like materials furnished by customers, while other of said rugs it made or fabricated from materials obtained by it from other sources. Respondent is also engaged in the sale and distribution of certain of its rugs, which were made or fabricated by manufacturers other than said respondent.

Respondent, in soliciting the sale of and selling, in interstate commerce, those of its products which it does not manufacture, agreed to cease and desist forever from the use of the statement that it is the largest and oldest rug manufacturer in the world dealing direct with the home and from the use of statements or representations in its advertisements or advertising matter distributed in interstate commerce, which may have the capacity or tendency to deceive purchasers into the belief that the said respondent is a manufacturer of said product or that said respondent owns, operates, or controls, a mill or mills, plant or factory, wherein such products are made or manufactured, when such is not the fact. Respondent also agreed to cease and desist from the use in its advertisements and advertising matter, circulated and distributed in interstate commerce, of statements that said respondent makes gorgeous reversible rugs, including oriental designs and rich, plain colors from old materials, or the statement that they make luxurious modern rugs from old rugs and clothing, or the statements that, "all of your good wool goes into the surface of the rug where it belongs," and "you can order rugs in any color or pattern shown in this book regardless of the colors in your old material," or the statement, "by our scientific new patented process, the valuable seasoned wool in your old carpets, rugs, and clothing is reclaimed like new," or of any other statements or representations, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive customers into the belief that the rug which is to be furnished by said respondent to each customer will be

made or manufactured from the identical material supplied the respondent by the said customer when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

839. False and Misleading Brands or Labels and Advertising—Soft Drink Concentrates.—Respondent, a corporation, engaged in the manufacture of concentrates for use in the preparation of soft drinks and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "grape," "orange," "cherry," "peach," "pineapple," "raspberry," and "strawberry," or any of them either independently or in connection or conjunction each with the other or with any other word or words, pictorial representations, or in any way in its advertisements and advertising matter or on its labels, to designate, represent, or refer to its said products, so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of the juice or the fruit of the grape, orange, cherry, peach, pineapple, raspberry, or strawberry, or any of them, or, unless if the words "grape," "orange," "cherry," "peach," "pineapple," "raspberry," or "strawberry" be used to describe a synthetic flavor, the word or words so used shall be immediately preceded by the word "imitation," or some other appropriate word or words, printed in type equally as conspicuous as that in which the word "grape," "orange," "cherry," "peach," "pineapple," "raspberry," or "strawberry" is printed, so as clearly to indicate that the said flavor is not derived from the juice or the fruit of the grape, orange, cherry, peach, pineapple, raspberry, or strawberry.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

840. False and Misleading Advertising—Dog Remedies.—Respondent, an individual, engaged in the sale and distribution of alleged dog remedies in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from statements and representations to the effect that said product is a remedy or cure for all types of worms in dogs, and/or that it is good for, or a remedy for, running fits; and from the publication, circulation, and distribution in interstate commerce of the aforesaid or any other advertisements of advertising matter that does not truthfully represent or describe the product offered for sale and/or the results likely to be obtained from its use.

Respondent, also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

841. Using Advertising of Others Misleadingly—Granite Tombstones and Monuments.—Respondent, a corporation, engaged in the quarrying, cutting, and finishing of granite tombstones and monuments, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from using in its advertisements and advertising matter, circulated in interstate commerce, photographic views, cuts, or representations of tombstones or monuments produced by other corporations, individuals, firms, or partnerships, in connection with its own trade-mark, or so set out as to appear to represent and to be pictures of its own products, when such is not the fact.

Respondent, also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

842. False and Misleading Advertising—Water Filter.—Respondent, a corporation, engaged in the sale and distribution of a water filter, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its filter in interstate commerce, hereby agrees to cease and desist forever from the use in its advertisements and advertising matter, or in any other way, of statements and representations which may have the capacity and

tendency to mislead and deceive the purchasing public into the belief that water, which has been placed in said filter is caused to become charged with radioactivity in that degree, so as to possess special health-giving properties and therapeutic value, when such is not the fact, or which said statements or representations do not truthfully represent and describe the results to be obtained from the use of said filters. The said respondent also agreed to cease and desist from the use in its advertisements and advertising matter, distributed in interstate commerce, or in any other way, of statements purporting to be quotations from observations of doctors or other authorities, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such authorities indorse the use of radioactive water of about the strength of that produced in water by said filter, when such is not the fact.

Respondent, also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

843. **False and Misleading Advertising—Pianos, Radio Receiving Sets, Pool Tables, Clock Cases, and Other Products Requiring Fine Wood Finish.**—Respondent, a corporation, engaged in the manufacture of pianos, radio receiving sets, pool tables, clock cases, and other products requiring fine wood finishes, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "walnut," either independently or in connection or conjunction with any other word or words, in its advertisements and advertising matter, or as a trade designation for its products, so as to import or imply that such products are those products which are derived from the walnut or "Juglandaceae" family, when such is not the fact; and said respondent further agreed to cease and desist from the use of the word "walnut" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of its products, which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are those products which are derived from trees of the walnut or "Juglandaceae" family, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

844. **False and Misleading Brands or Labels and Advertising—Fruit Concentrates.**—Respondent, copartners, engaged in the manufacture of fruit concentrates for use in the preparation of soft drinks, and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from stating and representing in advertisements or advertising matter circulated in interstate commerce, or on labels for use by their customers in bottling-said product: (a) That their product is an orange-juice drink; (b) that it contains the natural juice sacs of the orange; (c) that it does not contain any added acid, either independently or in connection or combination each with the other, or with any other word, words, or phrases which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said product is a true orange-juice drink containing the natural juice sacs of the orange and without added acid, when such is not the fact.

Respondent also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 14, 1931.)

845. **False and Misleading Advertising—Health Manuals and Courses of Dietary Instruction.**—Respondent, a corporation, engaged in the sale of health manuals and courses of instruction in relation to diet in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its manuals and courses of dietary instruction in interstate commerce, agreed to cease and desist forever (1) from stating and representing, directly or indirectly: (a) That diet alone will rejuvenate a diseased human body; (b) that diet alone will create "pep," or make an individual look appreciably younger within a brief space of time; (c) that diet alone will flush, cleanse, purify, or wash away "old-age deposits"; (d) that by means of diet alone the blood stream and glands may be charged with new life; (e) that backache and/or headache can invariably be eliminated by diet alone; (2) from making exaggerated and inaccurate statements, not supported by the facts, respecting the results to be accomplished by the use of its system of dietetics.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

846. **False and Misleading Advertising—"Flu" Cure.**—Respondent, a corporation, engaged in the manufacture of a patented preparation and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of its advertisements and advertising matter distributed in interstate commerce of statements and representations which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a preventive of, or a remedy, cure, or, prescription for influenza or flu or lagrippe, when such is not the fact. The said company also agrees to cease and desist from the use in its said advertisements and advertising matter of any and all statements which do not truthfully represent and describe the curative or therapeutic value or qualities and effects to be derived from the use of said product.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

847. **False and Misleading Brands or Labels and Advertising—Proprietary Medicines.**—Respondent, a corporation, engaged in the sale and distribution of proprietary medicines, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from:

(1) The use on labels placed on the containers in which its "iron tonic tablets" are sold and distributed in interstate commerce of the phrase containing the word "manufactured" either independently or in connection or conjunction with any other word or words, in soliciting the sale of and selling any such product which is not actually compounded or manufactured by said respondent in a laboratory owned, operated, and controlled by it.

(2) stating or representing in its advertisements and advertising matter circulated in interstate commerce,

(a) that its products were a cure for the disease known as Psoriasis;

(b) that said products are registered with the Food, Drug, and Insecticide Administration of the Department of Agriculture at Washington, D. C.

(c) that its products are the products of many years of study and research of its chemists in its laboratories; and/or

(d) that doctors have come personally to its laboratories to tell it of the results they have obtained by the use of said products in the treatment of cases of psoriasis;

(3) the use in such advertisements and advertising matter of any other false, misleading, or exaggerated statements or claims which may have the tendency and effect to confuse, mislead, and deceive the purchasing public in respect of its said products.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used as evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

848. False and Misleading Brands or Labels and Advertising—Rat Killing Chemical.—Respondent, copartners, engaged in the manufacture of a chemical used for killing rats and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist forever from stating and representing, on the labels affixed to containers in which their products are packed, or in advertisements or advertising matter, that the said product or ingredients used by them in the preparation of said product have been approved by the Biological Survey of the United States Department of Agriculture, when such is not the fact.

Respondent also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 14, 1931.)

849. False and Misleading Advertising—Men's Shirts and Womens' Blouses.—Respondent, copartners, engaged in the manufacture of men's shirts and women's blouses and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from stating and representing, in advertisements or advertising matter, letterheads, invoices, or other literature circulated in interstate commerce, that

they own, operate, or control a factory or factories at either Newark, N. J., Port Chester, N. Y., or Troy, N. Y., or at any other place, when such is not the fact.

Respondent also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 14, 1931.)

850. False and Misleading Advertising—"Radium Ore Bar."—Respondent, an individual, engaged in the sale and distribution of an article or product designated "radium ore bar" in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter, or in any way, of statements and representations in the form of testimonials or otherwise having the capacity or tendency to convey the belief that water is caused to become radioactive by the immersion therein of said product so as to charge such water with special health-giving properties and therapeutic value in excess of what is actually the case and which statements and representations do not truthfully represent and describe the said product and/or the results obtained from the use of said product. The said respondent also agrees to cease and desist from the use in his said advertisements and advertising matter, or in any way, of statements purporting to be quotations from observations of physicians or other authorities, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such authorities endorse the use of radioactive water of about the strength of that produced in water by the immersion therein of said product, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 14, 1931.)

851. False and Misleading Advertising—Furniture.—Respondent, a corporation, engaged in the manufacture of furniture, and also in the purchase of furniture from other factories for resale, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from stating and representing, directly or indirectly, in its advertisements and advertising matter circulated in interstate commerce, that it is the manufacturer of the furniture which it sells, when such is not the fact; and from any and all advertisements and advertising matter circulated in interstate commerce, that it is the manufacturer of the furniture which it sells, when such is not the fact; and from any and all advertisements and advertising matter, statements and representations which may import or imply, or which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that the furniture which it advertises and sells in interstate commerce is manufactured by it, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

852. **Resale Price Maintenance—Mattresses and Bedsprings.**—Simmons Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located in the city of New York, in the State of New York, and having a factory and warehouses located in each of four territorial divisions of the United States. It has been engaged for more than one year last past in the sale and distribution of mattresses and bedsprings in commerce between and among various States of the United States. It caused said products, when sold, to be shipped from its place of business in the State of New York or from its warehouses and factories in different States to purchasers thereof located in a State or States other than the State wherein shipment originated. In the course and conduct of its business, Simmons Co. was at all times herein referred to in competition with other corporations, individuals, partnerships, and firms likewise engaged in the sale and distribution of similar products in interstate commerce.

In the course and conduct of its business, Simmons Co. caused certain of the products sold and distributed by it in interstate commerce to be advertised extensively in newspapers and other advertising mediums having circulation between and among various States of the United States. Further in the course of its business, Simmons Co. adopted a system, involving the cooperation of the retail prices established by it and at which its said products should be sold by said trade, and which system the said company caused to be maintained and enforced. As an initiatory step toward putting its system into effect, the said company caused it to be generally known to the trade, by means of price lists and letters, through visits by its salesmen and representatives to the offices of its customers, and by

other means, that it expected and required its customers to maintain resale prices established by it. To enforce obedience to its said system, the company, cooperating with the trade aforesaid, employed the following means, to wit: (a) Obtained and accepted promises and assurances from its customers that they would cooperate in the maintenance of resale prices suggested by it and threatened to and did refuse to sell supplies of products to dealers who failed or refused to maintain its suggested resale prices, or who sold to other dealers who failed to observe said resale prices; (b) availed itself of the cooperation of its customers in reporting dealers who failed to maintain its suggested resale prices, and caused its salesmen and representatives to trace and ascertain the identity of dealers who failed to observe said resale prices or who sold to other dealers who failed to observe said resale prices, and solicited and obtained promises and assurances from such offending dealers to cooperate in the maintenance of said suggested resale prices as a condition precedent to further supplying such offending dealers with its products; (c) caused a "do not sell" record or list to be kept on which it listed those dealers reported as failing or refusing to maintain its suggested resale prices and who were not to be supplied with products until they gave assurances or other satisfactory evidence that they would cooperate with the said company in the maintenance of its suggested resale prices.

It is further stipulated and agreed, by and between the said C. W. Hunt, chairman of the Federal Trade Commission and Simmons Co. that Simmons Co. hereby agrees to cease and desist forever from the following cooperative methods: (a) Obtaining and accepting from the retail and other trade promises or assurances to cooperate with said company in the maintenance of any system of resale prices whatsoever and/or threatening to refuse to sell supplies of products to dealers who fail or refuse to cooperate with said company in the maintenance of its suggested resale prices, or who sell to other dealers who do not observe and sell at said suggested resale prices; (b) cooperating with and/or accepting and encouraging the cooperation of its customers in reporting dealers who fail to maintain the resale prices established by it; (c) employing salesmen, agents or other representatives to assist it in the enforcement of its resale price maintenance policy by reporting dealers who fail or refuse to cooperate with said company in the observance of said resale prices or who sell to other dealers who do not observe said resale prices; (d) seeking and securing, by any means whatsoever, promises or assurances from price cutters or alleged price cutters that such offenders will cooperate with the said company in the maintenance of its suggested resale prices as a condition to further supplying such offending dealers with its products; (e) causing dealers to be enrolled upon "do not sell" records or lists of purchasers who are not to be supplied with the

products of said company unless and until they have given satisfactory promises or assurances of their purpose to cooperate with said company in the maintenance of designated resale prices in the future; (f) directly or indirectly carrying into effect by cooperative methods any system whatsoever for the maintenance of resale prices established by the said company.

It is further stipulated and agreed, by and on behalf of the commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the name of the respondent stipulating, shall be released for publication and become a part of the public record. (September 14, 1931.)

853. False and Misleading Trade or Corporate Name, Brands, or Labels and Advertising—Motor Oils and Oils for Painters.—Respondent, a corporation, engaged in the sale and distribution of motor oils and oils for painters' use, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from—

(a) The use of the word "refining" as a part of or in connection with its corporate or trade name, in its advertisements or advertising matter circulated in interstate commerce, or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said corporation owns, controls, or operates a mill or refinery wherein the products which it sells and distributes in interstate commerce are prepared or refined, when such is not the fact;

(b) The use of the word "castor" either independently or in connection with "oil," or with any other word or words in advertising, branding, labeling, or otherwise designating any of its products so as to import or imply that said product is made of castor oil, or contains castor oil in substantial quantity, when such is not the fact;

(c) Stating or representing, by advertisements or otherwise, that the product heretofore sold and distributed by it under a certain trade name is a scientific blend of castor and mineral or other oils when such is not the fact;

(d) The use of exaggerated claims and representations respecting the results to be obtained by the use of said product heretofore sold and distributed under a certain trade name;

(e) Stating and representing in advertisements and advertising matter distributed in interstate commerce, or otherwise, that its

product sold and distributed under a certain trade name is super-refined and/or thoroughly dewaxed; and from statements and representations which import or imply that the thinning of lubricating oils in an automobile engine is due to the wearing of the oil;

(f) stating and representing in advertisements and advertising matter distributed in interstate commerce, or otherwise, that its product sold and distributed under a certain trade name is composed wholly, or in major part, of oils produced in the State of Pennsylvania, when such is not the fact;

(g) stating and representing in advertisements and advertising matter distributed in interstate commerce that its product sold and distributed under a certain trade name is a substitute for genuine linseed oil, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 14, 1931.)

854. False and Misleading Brands or Labels and Advertising—Plating Compound for Polishing Metals.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of an alleged plating compound used for polishing metals, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in labeling, designating, advertising, selling, and distributing his said product in interstate commerce, agreed to cease and desist forever from the use of the words "chromium" and/or "kwickrome" either independently or in connection with any other word or words; and from the use of the words "chromium" and/or "kwickrome" or of any colorable imitation of the word chromium in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said product contains chromium, when such is not the fact; and from the use of the words "plate" or "plating" in any way so as to import or imply that the said product is a plate or plating for other products.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 7, 1931.)

855. False and Misleading Brands or Labels—Automobile and Marine Specialties Including Life Preservers.—Respondent, a corporation, engaged in the manufacture of automobile and marine specialties, including life preservers, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations,

individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from labeling or marking its products or otherwise representing the same as "approved by the steamboat inspector, Department of Commerce," or with any other words, phrases, sentences, or statements which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that such products have been approved by any official of any bureau or department of the Government of the United States, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 7, 1931.)

856. False and Misleading Brands or Labels and Advertising—Malt Sirup.—Respondent, an individual, engaged in the manufacture of a malt sirup and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product, agreed to cease and desist from the use of the word "extract" either independently or in connection or conjunction with any other word or words, or in any other way on his brands or labels affixed to said packaged product, or in his advertisements or advertising matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is an extract, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 9, 1931.)

857. False and Misleading Advertising—Engineers' Supplies Including Tracing Paper.—Respondent, a corporation, engaged in the sale and distribution of engineers' supplies, including tracing paper in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its adver-

tisements and advertising matter distributed in interstate commerce of the word "linen" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product so represented, designated and described is made of linen, the product of the hemp or flax plant, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 9, 1931.)

858. False and Misleading Advertising; Substitution—Bakers' Woodenware, including Wooden Peels.—Respondent, a corporation, engaged in the manufacture of bakers' woodenware, including wooden peels, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and filling orders for its products in interstate commerce, agreed to cease and desist forever from substituting other woods for those advertised and represented to be sold, without the knowledge and consent of customers.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 16, 1931.)

859. False and Misleading Trade or Corporate Name and Advertising—Pharmaceutical Preparations.—Respondent, a corporation, engaged in the sale and distribution of pharmaceutical preparations in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "laboratories" as part of, or in connection or conjunction with its corporate or trade name, or in soliciting the sale of or selling its product in interstate commerce, or on its letterheads, price lists, or other printed matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said respondent owns, operates, and controls the laboratory or factory in which is made and/or compounded the product sold and distributed by it in interstate commerce.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 16, 1931.)

860. False and Misleading Brands or Labels and Advertising—Flavoring Extracts.—Respondent, a corporation, engaged in the manufacture of flavoring extracts and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Adolph Schultz, Berlin," and/or "Gustav Schraff Fabrik, Mainz," and/or of pictorial representations, either independently or in connection or conjunction each with the other, or with any other word or words, brands, labels, or other advertising or printed matter in the sale and distribution of its products in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such products are manufactured by Adolph Schultz in Berlin, Germany, or by Gustav Schraff in Mainz, Germany, and/or are imported into the United States, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 16, 1931.)

861. False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Malt Sirup.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of malt sirups, and in competition with other individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in selling and distributing his products in interstate commerce, agreed to cease and desist forever from the use of the word "extract" as a part of his trade name, or on labels, stationery, advertisements, or advertising matter, or in any way which may have the tendency and effect to confuse, mislead, and deceive purchasers into the belief that said products are malt extracts, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 19, 1931.)

862. False and Misleading Advertising—Golf Tees.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of golf tees, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in advertising, selling, and distributing his products in interstate commerce, agreed to cease and desist forever from stating or representing directly or indirectly that he is a manufacturer, or that the products which he sells were or are manufactured by him, when such is not the fact; and from the use of statements and representations having the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that he manufactures the products which he sells, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 23, 1931.)

863. False and Misleading Advertising and Disparagement—Flavors and Extracts.—Respondent, a corporation, engaged in the manufacture of flavors and extracts and in the sale and distribution thereof to bottlers of soda water in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the statement or representation "no other orange juice is safe" or of any other similar statement or representation either independently or in connection or conjunction or combination with any other word or words, statement or representation, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that similar products manufactured by its competitors and sold and distributed in interstate commerce are not safe.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 26, 1931.)

864. False and Misleading Brands or Labels—Art and Novelty Specialties.—Respondents, copartners, engaged in the importation and manufacture of art and novelty specialties, and in the sale and distribution of said products in interstate commerce, and in compe-

tion with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in importing, manufacturing, assembling, branding, and selling and distributing their products in interstate commerce, agreed to cease and desist forever from assembling, branding, stamping, and/or marking their products in such a manner as to confuse, mislead, or deceive purchasers into the belief that all the elements of which the same are composed are imported, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 26, 1931.)

865. False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Malt Product.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of a malt product, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the word "extract" as part of or in connection or conjunction with his trade name in soliciting the sale of and selling his product in interstate commerce so as to import or imply that the said product is an extract, when such is not the fact; and from the use of the word "extract" either independently or in connection or conjunction with any other word or words, or in any other way on his letterheads or other printed matter distributed in interstate commerce, or on his labels affixed to said product sold and distributed in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is an extract, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 26, 1931.)

866. False and Misleading Advertising—Hats.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of general merchandise, including hats, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its hats in interstate commerce, agreed to cease and desist from the use of the words "Toyo

Panama" as descriptive of its said hats in its advertisements and advertising matter distributed in interstate commerce so as to import or imply that the said products are products made from the leaves of the Jipijapa and in accordance with the process used in the manufacture of Panama hats, and from the use of the word "Panama" either independently or in connection or conjunction with the word "Toyo" or with any other word or words or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said hats are Panama hats.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 30, 1931.)

867. False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Malt Product.—Respondents, copartners, engaged in the manufacture of a malt product and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist from the use of the word "extract" as part of or in connection or conjunction with their business or trade name in soliciting the sale of and selling their product in interstate commerce, and from the use of the word "extract" either independently or in connection or conjunction with any other word or words, or in any other way on their brands or labels affixed to said product or in their advertisements, letterheads, circulars, or other printed matter distributed in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is an extract, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 30, 1931.)

868. False and Misleading Advertising—Women's Headwear.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of women's apparel, including headwear, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Panama" either independently or in connection or conjunction

with any other word or words, in its advertisements or advertising matter, or in any other way to describe a product not made from the leaves of the Jipijapa nor in accordance with the process used in the manufacture of Panama hats; and from the use of the word "Panama" either independently or in connection with any other word or words, or in any way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that such products are Panama hats, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 2, 1931.)

869. False and Misleading Advertising—Book, Writing, and Printing Papers.—Respondent, a corporation, engaged in the manufacture of book, writing, and printing papers, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "handmade finish" in its advertisements or advertising matter to describe and designate a product not finished by hand; and from the use of the word "handmade" in any way which may import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said product is handmade, or finished by hand, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 4, 1931.)

870. False and Misleading Advertising—Household and Stock Preparations.—Respondent, a corporation, engaged in the sale and distribution of a general line of household preparations and of several stock preparations in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, in its advertisements and advertising matter distributed in interstate commerce, of the statement "* * * the only one in this line of business employing a full-time licensed doctor of veterinary medicine," when

such is not the fact; and the said company also agrees to cease and desist from the use of the aforesaid statement, or of any similar statement or statements which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said company is the only concern engaged in similar business operating under the direction of a licensed veterinarian, when such is not the fact. The said company further agreed to cease and desist from the use of a statement to the effect that it employs and/or has in its service a licensed veterinarian, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 4, 1931.)

871. **False and Misleading Advertising and Brands or Labels—Artificial "Vichy" Water.**—Respondent, an individual, engaged in the manufacture of carbonated waters, including an alleged artificial "Vichy" water, and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product designated "artificial Vichy" in interstate commerce, agreed to cease and desist from the use of the word "Vichy" either independently or in connection or conjunction with the word "artificial," or with any other word or words or in any other way in its advertisements or advertising matter distributed in interstate commerce, or on its brands or labels affixed to its product sold in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is Vichy or artificial Vichy, when such is not the fact. Said respondent also agreed to cease and desist from the use on the labels affixed to his said product, or in any other way, of the statement "conforms to the average analysis of the most important Vichy springs" as descriptive of his said product, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 4, 1931.)

872. **False and Misleading Advertising and Brands or Labels—Artificial "Vichy" Water.**—Respondent, a corporation, engaged in the manufacture of soft drinks, including an alleged artificial Vichy water, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease

and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product designated artificial Vichy in interstate commerce, agreed to cease and desist from the use of the word "Vichy" either independently or in connection or conjunction with the word "artificial" or with any other word or words or in any other way on its printed matter distributed in interstate commerce or as a brand or label affixed to its product sold in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is Vichy or an artificial Vichy, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 4, 1931.)

873. **False and Misleading Advertising and Brands or Labels—Artificial "Vichy" Water.**—Respondent, a corporation, engaged in the manufacture of soft drinks, including an alleged artificial Vichy water, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product, in interstate commerce, agreed to cease and desist from the use of the word "Vichy" either independently or in connection or conjunction with the word "artificial," or with any other word or words, or in any other way in its advertisements or advertising matter distributed in interstate commerce, or on its brands or labels affixed to its said product sold and distributed by it in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is Vichy or an artificial Vichy, when such is not the fact. The said company also agreed to cease and desist from the use on its labels affixed to its said product, or in any other way of the statement "conforms to the average analysis of the most important Vichy springs," as descriptive of its said product, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 4, 1931.)

874. **False and Misleading Trade Name, Advertising, and Brands or Labels—Hosiery, Lingerie, and Neckwear.**—Respondent, an individual, engaged as a dealer in a variety of products, including hosiery,

lingerie, and neckwear, and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in advertising, selling and distributing her products in interstate commerce, agreed to cease and desist forever from the use of the word "knitting" as a part of, or in connection with her trade name, either independently or in connection or conjunction with any other word or words, or in any way which may import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said respondent owns, controls, or operates a mill or factory wherein the products sold and distributed by her in interstate commerce are manufactured, when such is not the fact; the use in advertisements and advertising matter and/or on labels of exaggerated statements and representations respecting the value of her products in excess of their usual and probable selling value, and which may confuse, mislead, or deceive purchasers respecting such values; and the use of the word "silk" either independently or in connection and conjunction with any other word or words in advertising, labeling, or describing products sold and distributed by her in interstate commerce not composed of silk, the product of the cocoon of the silk worm; and from the use of the word "silk" in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that such products are composed of silk, the product of the cocoon of the silk worm, when such is not the fact.

Respondent also agreed that should she ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against her in the trial of the complaint which the commission may issue. (November 4, 1931.)

875. False and Misleading Advertising and Brands or Labels—Flavoring Extract Products.—Respondent, an individual, engaged in the manufacture of products for use as flavoring extracts and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter distributed in interstate commerce, or on the brands or labels affixed to his products sold and shipped in interstate commerce, of the word "imported" either independently or in connection or conjunction with the word "genuine" or with any

other word or words, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are of foreign manufacture and/or made or manufactured into the finished products abroad and imported into the United States, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 6, 1931.)

876. **False and Misleading Advertising—Ladies' Hats.**—Respondents, copartners, engaged in the importation and manufacture of ladies' hats and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their said hats in interstate commerce, agreed to cease and desist from the use of the word "Panama" either independently or in connection or conjunction with any other word or words, or in any other way on their printed matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are products manufactured from the leaves of the Jipijapa and in accordance with the process used in the manufacture of panama hats, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 6, 1931.)

877. **False and Misleading Advertising—Hats.**—Respondent, a corporation, engaged in the business of operating a department store and in the sale and distribution of its merchandise, including hats, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said hats in interstate commerce, agreed to cease and desist from the use of the word "Panama" either independently or in connection or conjunction with any other word or words, or in any other way in its advertisements or advertising matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said products are products made from the leaves of the Jipijapa and in accordance with

the process used in the manufacture of panama hats, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 6, 1931.)

878. False and Misleading Trade Name, Advertising, and Brand or Label—Umbrella Fabrics.—Respondents, copartners, engaged in the importation, sale, and distribution in interstate commerce of fabrics used for manufacturing umbrella covers, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "taffeta" either independently or in connection or conjunction with any other word or words, in advertisements or advertising matter, as a trade name or brand for a product not composed wholly of silk, the product of the cocoon of the silk worm, or unless when the word "taffeta" is used to describe or designate a product composed in substantial part of silk, in which case the word "taffeta" shall be accompanied by some other word or words, printed in type equally as conspicuous as the type in which the said word "taffeta" is printed so as to indicate clearly that the product is not composed wholly of silk, but contains a material or materials other than silk.

Respondents also agreed that should they ever indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 6, 1931.)

879. False and Misleading Advertising—Stationery.—Respondent, an individual, engaged in the printing of stationery and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "engraved" and/or "embossing" either independently or in connection or conjunction each with the other, or with any other word or words in his advertisements and advertising matter in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products printed and sold by him in interstate commerce are engraved or embossed, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 9, 1931.)

880. Simulation of Trade Name—Hospital Record Forms.—Respondent, a corporation, engaged in the printing of hospital record forms and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the words "Physicians Record Co." as part of or in connection or conjunction with its corporate or trade name in its advertisements or printed matter distributed in interstate commerce, and from the use of its trade name including the words "Physicians Record Co." in any way in soliciting the sale of and selling its products in interstate commerce so as to confuse, mislead, or deceive the purchasing public into the belief that the business conducted by the said respondent and that of its competitor, Physicians Record Co., are one and the same, or that said respondent is connected in any way with the said Physicians Record Co.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 11, 1931.)

881. False and Misleading Advertising and Brands or Labels—Artificial "Vichy" Water.—Respondent, a corporation, engaged in the manufacture of soft drinks, including an alleged artificial Vichy, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling in interstate commerce, its product designated "artificial Vichy," agreed to cease and desist from the use of the word "Vichy" either independently or in connection or conjunction with the word "artificial" or with another word or words, or in any other way on its letterheads or other printed matter distributed in interstate commerce, or on its brands or labels affixed to its product sold and distributed in interstate commerce, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is Vichy or an artificial Vichy, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 11, 1931.)

882. **False and Misleading Trade Name and Advertising—Ladies' Hosiery.**—Respondents, copartners, engaged in the sale and distribution by mail order in interstate commerce of ladies' hosiery, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "manufacturing" as a part of their trade name, either independently or in connection or conjunction with any other word or words, or in advertisements or advertising matter, stationery, correspondence or in any other way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that they own, control, or operate a mill or factory wherein the products sold and distributed by them in interstate commerce are made or fabricated, when such is not the fact; the use in advertisements or advertising matter of statements or representations that their purchasers sell direct from the factory, or that said respondents have purchased machinery for the manufacture of their products, when such is not the fact; the use in advertisements or advertising matter of the word "silk" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products in connection with which the word "silk" is used are composed of silk, the product of the cocoon of the silk worm; unless, when such products are composed in substantial part of silk, and the word "silk" is used as descriptive thereof, in which case the word "silk" shall be accompanied by some other word or words printed in type equally conspicuous as the word "silk" clearly indicating that said products are not composed wholly of silk, but in part of a material or materials other than silk; the use in advertisements and advertising matter circulated in interstate commerce of statements and representations that the said products are knitted or fabricated in some special or distinctive manner which renders them run proof, or that the so-called "Lockstitch" is knit into such products, when such is not the fact.

Respondents also agree that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against them in the trial of the complaint which the commission may issue. (November 11, 1931.)

883. False and Misleading Advertising and Brands or Labels—Artificial “Vichy” Water.—Respondent, a corporation, engaged in the manufacture of near beer and other bottled drinks, including an alleged artificial Vichy, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling in interstate commerce its product designated “artificial Vichy,” agreed to cease and desist from the use of the word “Vichy” either independently or in connection or conjunction with the word “artificial” or with any other word or words, or in any other way in its printed matter distributed in interstate commerce, or on its brands or labels affixed to its said product sold and distributed in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a Vichy or an artificial Vichy, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 11, 1931.)

884. False and Misleading Advertising—Automobile Alarms.—Respondent, a corporation, engaged in the manufacture of an alleged alarm device for attachment to or use in connection with automobiles, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of any and all statements and pictorial or other representations in its advertisements or advertising matter distributed in interstate commerce which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a vocal one capable of emitting or adapted to actually emit words of warning, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (November 11, 1931.)

885. **False and Misleading Advertising—Antiques of Wrought Iron, Pottery, Hooked Rugs, "Colonial" Coverlets.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of antiques of wrought iron, pottery, hooked rugs, and alleged colonial coverlets, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth herein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease, and desist forever from making statements and representations in its advertisements or advertising matter circulated in interstate commerce, to the effect that its products or any of them, are handmade or woven by hand, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 11, 1931.)

886. **False and Misleading Advertising and Brands or Labels—Work and Sport Clothing.**—Respondent, a corporation, engaged in the manufacture of work and sport clothing, including coats, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "horsehide" either independently or in connection or conjunction with the word "genuine," or with any other word or words, or in any other way on the brands or labels affixed to its products sold and distributed in interstate commerce, or in its printed matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are made or fabricated from the hide of a horse, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 18, 1931.)

887. **False and Misleading Advertising—"Flycatchers."**—Respondent, a corporation, engaged in the business of selling and distributing at wholesale a product under the designation "flycatcher" in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the follow-

ing agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Honey" either independently or in connection or conjunction with any other word or words, or in any other way in its advertisements or advertising matter distributed in interstate commerce or as a trade brand or designation for its said product sold in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is composed of honey or that the ribbon thereof has been treated with honey, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 18, 1931.)

888. False and Misleading Advertising and Brands or Labels—Book, Writing, and Printing Paper.—Respondent, a corporation, engaged in the manufacture of book, writing, and printing papers and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Nippon" either independently or in connection or conjunction with any other word or words, or with any pictorial representation so as to import or imply that its said products were made in Japan; and from the use of said word "Nippon" or any pictorial representation in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said product is made in Japan, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 18, 1931.)

889. False and Misleading Brands or Labels—Toys.—Respondent, a corporation, engaged in the manufacture of toys and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of

pictorial or other representations which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the objects represented on the containers in which its products are packed can be constructed with the magnetized sticks or other parts contained therein, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 18, 1931.)

890. False and Misleading Trade Name, Advertising, and Brands or Labels—Safety Razor Blades.—Respondent, a corporation, engaged in the manufacture of safety razor blades and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "cobalt" or any derivative or colorable variation thereof, as part of a trade name under which to carry on its business, or as a trade designation or brand for any of its products not containing cobalt, or in advertisements and advertising matter, or in brands placed upon its said products so as to import or imply that the said product contains cobalt; and from the use of the word "cobalt" or any derivative or colorable imitation thereof in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product to which the same is applied contains cobalt, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 23, 1931.)

891. False and Misleading Advertising and Brands or Labels—Ladies' Hats.—Respondent, a corporation, engaged in the manufacture of ladies' hats and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "Panama" either independently or in connection or conjunction with any other word or words, in marking, branding, labelling, describing, and representing its product not made from the leaves of the jipijapa, nor were they made in accordance with the process used in the manufacture of Panama hats.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 23, 1931.)

892. **False and Misleading Advertising and Brands or Labels—Artificial "Vichy" Water.**—Respondent, a corporation, engaged in the manufacture of carbonated waters and of an alleged artificial Vichy and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling in interstate commerce its product designated "pure artificial Vichy," agreed to cease and desist forever from the use of the word "Vichy" either independently or in connection or conjunction with the word "artificial" or with any other word or words, or in any other way in its advertisements or printed matter having interstate circulation or distribution or on its labels affixed to its product sold and distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a Vichy or an artificial Vichy, when such is not the fact. The said company also agreed to cease and desist from the use in its advertisements or advertising matter, or on its labels affixed to its said product, or in any other way, of the statement "conforms to the average analysis of the most important Vichy springs" as descriptive of its said product, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 23, 1931.)

893. **False and Misleading Advertising—"Colonial" Coverlets.**—Respondent, an individual, engaged in the sale of alleged colonial coverlets in interstate commerce, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling her products in interstate commerce, agreed to cease and desist forever from making statements and representations in her advertisements or advertising matter circulated in interstate commerce to the effect that her products are handmade, or woven by hand, when such is not the fact; and from statements and representations which have the capacity and tendency to confuse, mislead or deceive customers into the belief that

said products, or a substantial portion thereof, are handmade or hand woven, when such is not the fact.

Respondent also agreed that should she ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against her in the trial of the complaint which the commission may issue. (November 23, 1931.)

894. **False and Misleading Advertising—Dress Fabrics.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of dress fabrics, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use on its sample cards and/or other forms of advertisements and advertising matter of the words "crêpe," "chiffon," "velvet," and/or "pongee" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, and referred to are made of silk, the product of the cocoon of the silkworm, and from the use of the words "crêpe," "chiffon," "velvet," and/or "pongee" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated, represented, or referred to are made of silk, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 30, 1931.)

895. **False and Misleading Trade Name and Advertising—Knit Goods.**—Respondents, copartners, engaged in the sale and distribution in interstate commerce of knit goods, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the words "Knitting mills" or the words "Knitting" and "Mills" either independently or in connection or conjunction with any other word or words, on stationery, or in any other form of advertisements or printed matter so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that they own, control and operate a mill or factory wherein

the products which they sell and distribute in interstate commerce are manufactured, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 30, 1931.)

896. **False and Misleading Trade Name and Advertising—Upholstery Fabrics.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of upholstery fabrics, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Manufacturers" either independently or in connection or conjunction with any other word or words in advertisements or advertising matter circulated in interstate commerce so as to confuse, mislead or deceive purchasers into the belief that he owns, operates or controls a mill or factory wherein the products which he sells and distributes in interstate commerce are made or fabricated, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 30, 1931.)

897. **False and Misleading Corporate Name and Advertising—Polishing Liquid.**—Respondent, a corporation, engaged in the manufacture of a polishing liquid and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "Wax" as a part of or in connection with its corporate or trade name either independently or in connection with any other syllable, word, or words so as to import or imply that the said product contains wax in whole or in part, when such is not the fact; and from the use of the word "Wax" in advertisements or advertising matter circulated in interstate commerce in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said product is a wax product, or that it will produce the results generally attributed to the use of a wax product, when such is not the fact.

Respondent also agreed that, should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 30, 1931.)

898. False and Misleading Advertising—Paints, Varnishes, and Kindred Products.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of paints, varnishes, and other kindred products, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements or advertising matter, or on letterheads and other trade literature circulated in interstate commerce, of statements and representations to the effect that it is the manufacturer of said products, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 30, 1931.)

899. Misbranding—Artificial Vichy Water Salts.—Respondent, a corporation, engaged in the manufacture of an alleged artificial vichy water salts and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Vichy" in connection or conjunction with the word "artificial," or with any other word or words on the brands or labels affixed to said product, or in any other way as descriptive of said product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is an artificial vichy water containing all of the essential ingredients of natural vichy water, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 30, 1931.)

900. False and Misleading Trade Name and Brands or Labels—Carbon Paper.—Respondent, a corporation, engaged in the sale and distribution of carbon paper and typewriter ribbons, and in competition with other corporations, individuals, firms, and partnerships

likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in soliciting the sale of and selling its carbon paper in interstate commerce, agreed to cease and desist forever from the use of the word "Triplecote" either independently or in connection or conjunction with any other word or words, as a mark or brand for said product, or in any way which may import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said product so marked, branded, and represented has been coated three times, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 30, 1931.)

901. False and Misleading Trade Name and Brands or Labels—Carbon Paper.—Respondent, an individual, engaged in the sale and distribution of carbon paper and typerwiter ribbons, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his carbon paper in interstate commerce, agreed to cease and desist forever from the use of the word "Triplecote" either independently or in connection or conjunction with any other words as a mark or brand for said product, or in any way which may import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the product so marked, branded, and represented has been coated three times, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 30, 1931.)

902. Misleading Corporate Name—Paper Products.—Respondent, an individual, engaged in the conversion, sale, and distribution in interstate commerce of paper products, and in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution in interstate commerce, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" either independently or in connection with any other word or words, or in any way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive pur-

chasers into the belief that said respondent owns, controls, or operates a paper mill wherein his said products are manufactured, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 7, 1931.)

903. False and Misleading Trade Names and Brands or Labels—Typewriter Ribbons.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of typewriter ribbons, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Silk," "Silky" and/or "Silk-TEX" either independently or in connection or conjunction with any other word or words, as a mark or brand for its products, or in any way which may import or imply, or which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products so marked, branded and represented are made of silk, the product of the cocoon of the silk worm, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 7, 1931.)

904. False and Misleading Advertising—"Malt Product".—Respondents, copartners, engaged in the sale and distribution of an alleged malt product in interstate commerce, and in competition with other partnerships, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist from the use of the words "Enjoy that imported taste" or words of like import, either independently or in connection or conjunction with any other word or words, or in any other way in their advertising or printed matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers thereof into the belief that the said product, or an ingredient or ingredients thereof is or are all of imported origin, manufacture or growth and/or is or have been imported into the United States from abroad, when such is not the fact; unless, when said product is

composed in substantial part of an ingredient or ingredients which is or have been actually obtained from abroad and imported into the United States, and the words "Enjoy that imported taste" are used to refer to the ingredient imported or that part of the ingredient so imported, in which case the words "Enjoy that imported taste" shall be so used as to accurately and properly refer to the particular ingredient or ingredients imported or the part thereof which has been imported, and to otherwise clearly indicate that the said product is not composed wholly of ingredients of foreign origin.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 7, 1931.)

905. **False and Misleading Corporate Name Advertising, and Brands or Labels—Soft Drink Preparations.**—Respondent, a corporation, engaged in the manufacture of products for use by bottlers in making soft drink beverages and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the word "Fruit" either alone or with the word "Flavor" as part of or in connection or conjunction with its corporate or trade name in advertising or soliciting the sale of and selling in interstate commerce its product designated "Orange" and "Wine" so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said products are composed of and/or contain fruit or the juice thereof, or are flavored with fruit or the juice thereof, when such is not the fact. The said corporation also agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce or on its brands or labels or bottle caps affixed to its said products sold and distributed in interstate commerce of the words "Fruit," "Orange" and "Grape" either independently or in connection or conjunction with any other word or words, statement, representation, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said products are composed of, or derived from fruit or from the juice or the fruit of the orange or grape, respectively, when such is not the fact. The said corporation further agreed to cease and desist from the use of the words "Citric Acid" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of its product designated "Orange" sold and distributed in interstate commerce so as to confuse, mislead or deceive purchasers

into the belief that the said product contains citric acid, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 7, 1931.)

906. False and Misleading Trade Name and Advertising—Patent Medicine.—Respondent, an individual, engaged in the sale and distribution of a patent medicine in interstate commerce, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the word "Laboratories" as part of, or in connection or conjunction with her trade name in her advertisements or advertising matter distributed in interstate commerce so as to import or imply or deceive purchasers into the belief that the said individual owns, operates or controls the plant, factory or laboratory wherein is made or compounded the product which she sells and distributed in interstate commerce. Said respondent also agreed to cease and desist from the use of any and all of the aforesaid statements and representations in her advertisements and advertising matter which do not truthfully represent and describe said product, its properties and powers, or the therapeutic or curative possibilities of the said product. The said respondent also agreed to cease and desist from the use of the words and figures "An introductory offer only \$3.00. Regular price \$5.00. You save \$2.00 by ordering now," and "Special Price \$3.00 (Reduced from regular price of \$5.00)" either independently or in connection or conjunction each with the other, or with any other word or words, or in any other way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that such prices are special and/or introductory, when in truth and in fact the same are the usual and customary prices at which said products are sold.

Respondent also agreed that should she ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against her in the trial of the complaint which the commission may issue. (December 9, 1931.)

907. False and Misleading Advertising and Brands on Labels—Cigars.—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use in advertisements and advertising matter, or on labels, bands or otherwise of the word "Havana" to represent or designate their products either independently or in connection or conjunction with any other word or words, or in any way which may confuse, mislead, or deceive purchasers into the belief that said products are composed wholly of tobacco grown in the island of Cuba, when such is not the fact; and the words "de Cuba" or "from Cuba" either independently or in connection or conjunction with any other word or words, or with pictorial representations so as to confuse, mislead, or deceive purchasers into the belief that said products are composed wholly of tobacco grown in the island of Cuba, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 9, 1931.)

908. **False and Misleading Advertising—Food Products.**—Respondent, a corporation, engaged in the sale and distribution direct to consumers through soliciting salesmen of food products, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from stating and representing directly or indirectly, in advertisements and advertising matter circulated in interstate commerce that it grows or packs the products which it sells and distributes in interstate commerce, when such is not the fact; that it is a California corporation or that it maintains an office at Pasadena or in the State of California, when such is not the fact; that it is classified by the Bureau of Census in the Department of Commerce of the United States Government, or by the enumerators thereof as "a manufacturer by contract", when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 9, 1931.)

909. **False and Misleading Brands or Labels—Stogies.**—Respondent, a corporation, engaged in the manufacture of stogies and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Navana" either independently or in connection or conjunction with any other word or words on its brands or labels affixed to its said product sold and shipped in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said product is made from tobacco grown in the Island of Cuba, known to the trade and purchasing public as "Havana Tobacco" and from the use of the word "Navana," or of any other word simulating the word Havana as a trade brand or designation for its said product which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said product is manufactured or made from tobacco grown on the island of Cuba.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 14, 1931.)

910. **False and Misleading Misrepresentations and Advertising—Metallic Grave Vaults.**—Respondent, a corporation, engaged in the manufacture of metallic grave vaults and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from making exaggerated statements and representations, not warranted by the facts, respecting the durability under ground of its products; and from the use of statements and representations which have the capacity and effect to mislead and deceive purchasers into the belief that said products will last fifty years or more, underground, when such is not the fact; the use in advertisements and advertising matter of statements and representations that its products are guaranteed for a half century against the admission of water and/or the effects of corrosion, when such statements and representations are not warranted by the facts.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 14, 1931.)

911. **False and misleading trade or corporate name and advertising—Dress fabrics.**—Respondent, a corporation, engaged in the sale and distribution of dress fabrics in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to

cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from the use of the word "Importing" as a part of or in connection with its corporate or trade name, either independently or in connection or conjunction with any other word or words or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that it imports the products which it sells and distributes in interstate commerce, when such is not the fact; the use of a pictorial representation of a building, in its advertisements or advertising matter circulated in interstate commerce, in such a way as to have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that it owns or occupies the whole of said building, when such is not the fact; the use of the words "Silkette," "Silk," "Supersilk," "Silk Bengaline," "Crêpe," "Pongee," "Taffeta," or "Raysilk," either independently or in connection and conjunction with any other word or words in its advertisements or advertising matter circulated in interstate commerce, so as to import or imply that the products so designated are made of silk, the product of the cocoon of the silkworm; and from the use of the words "Silkette," "Silk," "Supersilk," "Silk Bengaline," "Raysilk," "Crêpe," "Pongee," or "Taffeta," in any way which may have the tendency and effect to confuse, mislead, or deceive purchasers into the belief that the products so designated are made of silk, the product of the cocoon of the silkworm, when such is not the fact; the use of the words "English Broadcloth" in its advertisements and advertising matter circulated in interstate commerce, either independently or in connection or conjunction with any other word or words, in any way so as to import or imply that the cloth from which the shirts to which such words are applied was imported from England, or that the same is that product generally known to the trade and the public as "Broadcloth," when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 18, 1931.)

912. False and misleading brands or labels and advertising—Cosmetics.—Respondents, copartners, engaged in the sale and distribution of cosmetics in interstate commerce, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the brands or labels affixed to said products, or in their advertisements or advertising matter distributed in interstate commerce, of the word "Paris" either independently or in connection or conjunction with the words "Gamine de," or with any other word or words, or in any other way to designate said products so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said products are made or compounded in Paris, France, or are of French origin and/or imported into the United States, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 18, 1931.)

913. False and misleading brands or labels and advertising—Canned tomato paste.—Respondents, copartners, engaged as importers and commission merchants in the sale and distribution of a variety of products, including canned tomato paste, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of brands, labels and other forms of advertisements and advertising matter circulated in interstate commerce of any pictorial or other representation, representing or suggesting, or which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that the contents of the package to which such brand or labels are affixed consist of paste made from the Italian plum-shaped tomato, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 18, 1931.)

914. False and Misleading Brands or Labels—Yarn Products.—Respondents, a corporation, engaged in the sale and distribution of yarn products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from the use as a brand or label affixed to its products of the words "Wool-o-silk" either inde-

pendently or in connection or conjunction with any other word or words so as to import or imply or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said product is composed wholly of wool and silk, each in substantial quantity, when such is not the fact; and from the use of the said words "Wool-o-silk" in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said product is composed of silk and of wool, each in substantial quantity so as to be properly and accurately designated, described, and referred to as wool and silk. The said corporation also agrees to cease and desist from the use of the word "Sparkle-wool" or of the word "Wool" either independently or in connection or conjunction with the word "Sparkle" or with any other word or words or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said product is composed wholly of wool; when such is not the fact; unless when said product is composed in substantial part of wool and the word "Wool", is used as descriptive thereof, in which case, the said word "Wool" shall be accompanied by some other word or words printed so as to indicate clearly, that the said product is not composed wholly of wool, or that will otherwise properly and accurately describe the said product.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issued. (December 18, 1931.)

915. **False and Misleading Advertisements—"Song Sheets."**—Respondent, a corporation, engaged in the business of publishing so-called "Song Sheets" consisting of comic verses and parodies on popular song hits of the radio, stage and screen in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of captions and headings describing and representing its productions as "Popular song hits", "Latest song hits", "Maurice Chevalier song hits", "Radio and screen song hits" or "Broadway song hits" and/or similar representations which import or imply, or which have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said productions are popular song hits, the latest song hits, Maurice Chevalier's song hits, radio and screen song hits, or Broadway's song hits, when such is not the fact; and from the use of the titles of popular song hits as a heading or caption for its song

sheets so as to import or imply, or which may have the effect to confuse, mislead or deceive purchasers into the belief that such productions are the authentic words of the song hits named, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 18, 1931.)

916. **False and Misleading Advertising—"Song Sheets."**—Respondent, an individual, engaged in the business of publishing so-called "Song Sheets" consisting of comic verses and parodies on popular song hits of the radio, stage and screen, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce agreed to cease and desist from the use of captions and headings describing and representing his productions as "Popular song hits", "Latest song hits", "Maurice Chevalier song hits", "Radio and screen song hits" or "Broadway song hits" and/or similar representations which import or imply, or which have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said productions are popular song hits, the latest song hits, Maurice Chevalier's song hits, radio and screen song hits, or Broadway's song hits, when such is not the fact; and from the use of the titles of popular song hits as a heading or caption for his song sheets so as to import or imply, or which may have the effect to confuse, mislead or deceive purchasers into the belief that such productions are the authentic words of the song hits named, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 18, 1931.)

917. **False and Misleading Brands or Labels—Umbrella Frames.**—Respondent, a corporation engaged in the manufacture of umbrella frames and in the sale of said products to manufacturers who convert the same into finished umbrellas which they sell and distribute in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in manufacturing umbrella frames and selling the same to manufacturers for resale in interstate commerce, agreed to cease and desist from stamping, marking, or branding the same with the words or letters "MADE IN GERMAN style F. U. F. Co." or with any other or similar words or letters which may import or imply, or which have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in Germany, or that the same are imported, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 21, 1931.)

918. False and Misleading Brands or Labels—Umbrellas.—Respondents, copartners, engaged in the sale and distribution of umbrellas in interstate commerce, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in selling and distributing their products in interstate commerce, agreed to cease and desist from stamping or branding the same with the words or letters "MADE IN GERMAN style F. U. F. Co." or with any other similar words or letters which may import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in Germany, or that the same are imported, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 21, 1931.)

919. False and Misleading Brands or Labels—Umbrellas.—Respondent, an individual, engaged in the sale and distribution of umbrellas in interstate commerce, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in selling and distributing his products in interstate commerce agreed to cease and desist forever from stamping or branding the same with the words or letters "MADE IN GERMAN style F. U. F. Co." or with any other similar words or letters which may import or imply, or which have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in Germany, or that the same are imported, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 21, 1931.)

920. **False and Misleading Representations and Advertising—Wood.**—Respondent, a corporation, agreed that in its sale, description and advertisement of the wood of the Philippine Islands which it has heretofore designated and described as "Philippine Mahogany" and articles of commerce made therewith, it will not employ the word "Mahogany" in connection with the sale of said wood without the modifying term "Philippine." (December 23, 1931.)

**DIGESTS OF FALSE AND MISLEADING ADVERTISING
STIPULATIONS¹**

082. **Vendor—Advertiser—Developing Cream.**—The vendor of a cream alleged to have the power to fill out and develop the neck, arms, bust, legs, and other portions of the human body, charged with making and publishing false and misleading claims and representations to induce the public to buy this cream, has admitted that the cream is primarily a lubricant and if any development results it would be due to the massage recommended rather than to the cream.

This vendor has agreed to discontinue publishing false and misleading claims and representations and particularly to cease and desist forever from representing—

- (a) "That he has made any research or experiment or incurred a large expense in developing said massage cream or the health instructions sold in combination with the cream;"
- (b) That the mere application of the cream will develop a beautiful, firm, well-rounded bust, eliminate the hollows from the neck, round out the arms, develop the limbs, or beautify the complexion;
- (c) That respondent is in possession of any body beautifying secrets;
- (d) And all representations and statements equivalent thereto in form or substance.

This vendor has also agreed to discontinue using the word "studio" as part of his trade name unless and until he actually maintains and operates a studio for the teaching and practicing of beauty culture. (April 6, 1931.)

083. **Magazine Publisher—Stationery.**—The corporate publisher of a magazine heretofore publishing the advertisements of an alleged

¹ Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor advertisers. Period covered is that of this volume, namely Mar. 24, 1931, to Dec. 23, 1931, inclusive. For digests of previous stipulations, see vol. 14 of Commission's Decisions at p. 602 et seq.

For description of the creation and work of the special board, see Vol. 14, pp. 602 et. seq.

employment service and the vendor of stationery offering employment but in fact seeking buyers for its stationery, both charged with making and publishing false and misleading statements and representations, has agreed with the Federal Trade Commission by stipulation:

- (a) To discontinue publishing such advertisements pending final disposition of the charges pending against the advertiser;
- (b) To observe and abide by the terms and provisions of any cease and desist order that may be made against the advertiser;
- (c) To observe and abide by the terms and provisions of any stipulation that may be entered into between the advertiser and the commission;

all upon condition that the commission will refrain from making the publisher a joint respondent with the advertiser in the proceedings pending against them. (May 4, 1931.)

084. Vendor Advertiser—Asthma, Hay Fever, Bronchitis Remedy or Treatment.—The vendor advertiser of an alleged remedy or treatment for asthma, hay fever, bronchitis, and kindred ailments, charged with making and publishing false and misleading claims and representations to sell its treatment, has admitted that 12 statements published by it are “wholly incorrect in certain respects and greatly exaggerated and misleading in others, in that it is not a cure for asthma, hay fever, or bronchitis, etc.”; and vendor has agreed by stipulation with the commission that it will cease and desist forever from representing—

- (a) That said medicinal preparation will cure or benefit asthma, hay fever, or bronchitis;
 - (b) That said medicinal preparation will rid or free the user of asthma, hay fever, or bronchitis;
 - (c) That the use of said medicinal preparation will cause lasting or permanent relief from asthma, hay fever, or bronchitis.
- (May 6, 1931.)

085. Advertising Agent—Home Work, Soliciting, etc.—An advertising agent placing for publication in various periodicals the advertising copy of a company offering employment but in fact merely selling a mimeographed list of various other advertisers offering home work, soliciting, etc., and having no employment itself to offer or give, was charged with making false representations to the public to sell its mimeographed booklet.

The advertising agent stipulated with the commission that he would immediately discontinue placing any more advertising copy for publication for this advertiser.

That he would also observe and abide by the terms of any cease and desist order that might be entered against any advertiser and/or by the terms of any stipulation that might be entered into between this advertiser and the Federal Trade Commission, if the charges should be adjusted by a stipulation instead of by a prosecution, upon the condition that the commission refrain from joining the advertising agent with the advertiser in proceedings if prosecuted. (May 6, 1931.)

086. **Advertising Agent—Arthritis, Neuritis Treatment.**—An advertising agent placing for publication in various periodicals the advertising copy of a vendor of an alleged treatment for arthritis, neuritis, and kindred ailments has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making this advertising agent a joint respondent with the advertiser in proceedings that may be prosecuted against it, based on charges of false and misleading representations to induce the public to buy its treatment, the advertising agent will observe and abide by the terms and provisions of any cease and desist order that may be entered against the advertiser and that if the case is settled by stipulation between the advertiser and the commission this advertising agent will likewise observe and abide by the terms and provisions of such a stipulation. (May 6, 1931.)

087. **Vendor-Advertiser—Rheumatism, Arthritis, Neuritis, Myalgia, Gout, and Myositis Treatment.**—The vendor of a tablet alleged to be a competent treatment for rheumatism, arthritis, neuritis, myalgia, and myositis has agreed with the Federal Trade Commission by stipulation that he will cease and desist hereafter from representing—

- (a) "That said medicinal preparation may be used without any ill effect upon the patient;
- (b) "That said medicinal preparation is a competent treatment for rheumatism, arthritis, myalgia, myositis, neuritis, gout, and allied afflictions, unless such representations are qualified to indicate that said preparation is efficacious only where such treatments result from excessive uric acid;
- (c) "That said medicinal preparation has any therapeutic value other than its action as a uric acid solvent or an analgesic or antipyretic;

and all representations and statements equivalent and similar thereto in form or substance. (May 6, 1931.)

088. **Vendor-Advertiser—Stomach Treatment.**—A corporation, manufacturer, vendor, advertiser of an external treatment or appliance for stomach ailments, indigestion, dyspepsia, sour stomach, heart burn, belching, bloating, pain or distress after eating, dizziness, constipation, biliousness, sick headache, nervousness, palpitation of

the heart, "or any form of stomach, liver, or bowel trouble" has agreed with the Federal Trade Commission that it will not hereafter represent—

- (a) "That the said treatment is competent as a remedy for stomach trouble or other ailments which do not have their origin in hyperacidity, sour stomach, or flatulence;
- (b) "That said treatment is effective for liver, kidney, or bowel complaints;
- (c) "That said treatment will tone or vitalize or feed or nourish, or in any other manner affect or stimulate the solar plexus.
- (d) "That such artificial stimulation of the solar plexus by means of said treatment would restore the normal functions and activities of the stomach and digestive system generally;
- (e) "That a sample is free unless said sample is sent without requiring the payment of any money for packing, postage, or otherwise and without requiring the rendering of any service;"

and all representations and statements equivalent or similar thereto in form or substance. (May 6, 1931.)

089. Vendor-Advertisers—Goiter Treatment.—The vendors of a treatment for goiter have stipulated with the Federal Trade Commission to cease and desist forever from representing—

- (a) "That the said treatment will reduce goiter in seven days;
- (b) "That the said treatment is no experiment;
- (c) "That thousands have testified "my goiter is gone" as a result of said treatment;
- (d) "That the ----- method is so different from the ordinary treatment that there is no comparison;
- (e) "That each case is handled strictly according to its individual needs unless and until such be the fact;
- (f) "That all the statements made in such advertising have been approved by high scientific authority;
- (g) "That the ----- formula contains medical elements based on recent scientific disclosures which produce results such as were never possible before;
- (h) "That this treatment has now reached a high degree of perfection;
- (i) "That results may be expected in a single day's time or that within a few days the goiter will be gone;
- (j) "That the highest grade of medical authority is called into consultation to pass upon the individual cases unless and until such be the fact;

- (k) "That the remedy is a strictly scientific product and will cure any uncomplicated case of goiter no matter of how long standing;
- (l) "That any deposit of money has been made in a bank to the credit of prospective purchasers or that the return of this purchase price will be assured in such manner;
- (m) "That any money is actually tied up by a purported certificate of deposit delivered to the prospect;
- (n) "That said treatment contains the only elements known to science as a positive specific for goiter;
- (o) "That the progress of each case will be watched so closely that recovery is prompt and permanent unless and until such be the fact;.
- (p) "That the respondents or either of them will pay for a portion of the prospect's treatment out of his or their own individual funds;
- (q) "That said treatment is prepared with the greatest scientific care in one of the best known laboratories in the country;
- (r) "That respondents own, operate, or control any laboratory unless and until such be the case;
- (s) "That any memorandum has been received from the laboratories regarding the prospect's individual case;
- (t) "That said treatment will completely free, or rid or cure one of goiter;
- (u) "That recovery through said treatment is prompt and permanent or that a single treatment is often enough to effect a complete reduction;
- (v) "That complete and final satisfaction is guaranteed through this treatment or that recovery is insured;
- (w) "That the cathartics or any other thing of value are given free, the consideration for same being included in the price charged for the ----- treatment;
- (x) "That the price charged for the treatment is a special price unless the price stated is lower than the price regularly charged for such treatment;
- (y) "That a time limit has been fixed for accepting an offer as to price and terms unless such acceptances are refused if received after expiration of such time limit;
- (z) "That the ----- formula is a competent remedy for the treatment of goiter unless such representation is accompanied by a statement that ----- and/or ----- can not be taken with safety to physical health except under the direction and advice of competent medical authority;"

and all representations and statements equivalent or similar thereto in form or substance. (May 6, 1931.)

090. Vendor Advertiser—Skin Peel.—Gaetano Torrelli, an individual operating under the trade name of New York laboratories, advertising and selling a skin peel claimed to remove and banish blackheads, large pores, freckles, sallow complexions, age lines, and other facial and skin blemishes, has signed a stipulation with the Federal Trade Commission in which he agrees that he will cease and desist forever from—

- (a) "Using the word 'laboratories' as part of their trade name until such time as respondents actually operate a laboratory;
- (b) "Using the words 'manufacturing chemists' on their advertising literature or letterheads until such time as respondents shall actually be manufacturing chemists;
- (c) "Stating or representing, directly or indirectly, that the skin peel offered for sale under the trade name of 'Arva' or any other name was or is the result of research, investigation, or experiment conducted by respondents;
- (d) "Stating or representing that the skin peel offered for sale under the trade name of 'Arva' or any other name will banish or remove large pores, sallow complexions, age lines, or disfigurements from the human face, neck, limbs, and body;
- (e) "Stating or representing that respondents own, control, or operate a scientific research division;
- (f) "Stating or representing that respondents have made an amazing or scientific discovery in said skin peel;
- (g) "Offering said skin peel, under the name of 'Arva' or any other name to the general public as either a safe or a competent treatment for the removal of large pores, sallow complexions, age lines, eruptions, or other disfigurements of the human face;"

and all representations and statements equivalent or similar in form or substance. (May 11, 1931.)

091. Vendor Advertiser—Diabetes Remedy.—The manufacturing vendor of a remedy for diabetes, advertising, and selling direct by mail, has agreed by stipulation with the Federal Trade Commission that it will cease and desist forever from representing—

- (a) "That said treatment acts directly on the glands of the digestive system and revitalizes them;

- (b) "That as soon as the symptoms disappear such treatment can be discontinued without their recurrence;
- (c) "That said remedy has a remarkable list of complete recoveries to its credit;
- (d) "That the success in the use of said formula has been conspicuous;
- (e) "That marked improvement is shown in more than 85 per cent of cases treated or that in the majority health is completely restored;
- (f) "That there will be no recurrence of any symptoms of diabetes after taking this treatment.
- (g) "That results obtained through this treatment are miraculous;
- (h) "That said remedy by its action through the glands corrects the abnormal condition that is responsible for the presence of sugar;
- (i) "That no constipation trouble will be encountered after commencing the use of said treatment;
- (j) "That marked improvement is immediate; bilious attacks disappear; or sugar and other symptoms disappear; and/or that the patient is left sugar free;"

and all representations and statements equivalent or similar thereto in form or substance. (May 25, 1931.)

092. **Vendor Advertisers—Lucky Stones, Wishing Bones, Magic Books, etc.**—M. A. Sommers and Louis Boyar, operating under the assumed trade names of Marshall-Richards Co., A. T. Stuart Co., C. J. Foster Co., R. E. Woods Co., L. M. Clark Co., R. D. Warner Co., advertising and selling lucky stones, wishing bones, magic books, love powders, lodestones, perfumes, King Solomon wisdom stories, goofer dust, oriental attraction powder, incense, and all sorts of stones, powders, oils, and perfumes under alluring, mystifying, magical names to bring luck, love, pep, wealth, and happiness, drive away evils, make white hair black, kinky hair straight and straight hair wavy, whiten black skin and offering free advice to purchasers of such merchandise, have agreed by stipulation to cease and desist forever from representing—

- (a) "That the respondents will personally advise the purchasers of said merchandise on matters pertaining to business, love, health, games of chance or any other matter, or that personal consideration will be given to matters presented them, unless in truth and in fact said personal advice or personal consideration is actually extended by respondents;

- (b) "That the respondents can solve any problems, especially those relating to business, love, finances, happiness, success in life, etc.;
- (c) "That the possession and/or use of any of the articles of merchandise sold by respondents will:
- (1) "Cause anyone to obtain success in any undertaking, or
 - (2) "Bring fame to anyone, or
 - (3) "Cause anyone to acquire wealth, or
 - (4) "Cause anyone to win at games of chance, or
 - (5) "Enable anyone to control others, or
 - (6) "Create or dispel any so-called charm or any so-called evil spell, or
 - (7) "Influence the emotions of any one, or
 - (8) "Cause any one to acquire happiness, or
 - (9) "Cause any one to be strong, or powerful;
- (d) "That any of the articles of merchandise sold by respondents possess magical power or that their possession or use will result in any change in the life of, or will affect in any degree the habits, fortune, state of health, or condition of the purchasers thereof;
- (e) "That the possession or use of respondents' so-called 'Win-in-Games,' lucky lodestone, and/or money drawing oils will cause the possessor of said articles to have good luck in any or all matters;
- (f) "That such a thing exists as male and female lodestones, respectively, or that these or any other lodestones have any effect in bringing luck or in controlling another person;
- (g) "That there are powders of any nature, perfumes or aromas that will induce one person to love another;
- (h) "That any preparation sold by respondent for treatment of the hair,
- (1) "Is a new gland discovery, or
 - (2) "Will feed the hair roots, or
 - (3) "Will cause a growth of straight hair, or
 - (4) "Is a scientific discovery, or
 - (5) "Will cause new hair to grow, or
 - (6) "Will supply nourishment to hair roots, or
 - (7) "Will produce abundant hair;
- (i) "That respondents' 'Love Drops' or perfumes are imported from Hindustan, Egypt, or other countries or are manufactured or compounded from ingredients of Hindustanic, Egyptian, or other oriental origin, unless they are so imported or compounded;

- (j) "That the medicinal preparation designated as 'pep-ups' and 'pep tablets,'
- (1) "Will restore 'pep,' 'vim,' or 'vitality,' or
- (2) "Will rejuvenate the user, or
- (3) "Will cause lost manhood or lost womanhood to be regained;
- (k) "That gray hair can be banished or removed or the color otherwise changed than by dyeing;
- (l) "That the color of one's skin can be actually changed from dark to white over night or in any other length of time;"

and all representations and statements equivalent or similar thereto in form or substance. (May 25, 1931.)

093. Vendor Advertiser—Hair Dye.—B. Clement (a corporation), New York, N. Y., manufactures and sells a hair dye claimed to be a French preparation that can be applied by the user and will restore gray or faded hair to its former shade and beauty.

This corporation has agreed to discontinue many claims heretofore made for its dye and has stipulated with the Federal Trade Commission to cease and desist forever from representing—

- (a) "That Nalfa is a French preparation;
- (b) "That said product restores hair to its former color;
- (c) "That it is the latest and most scientific method of tinting gray hair;
- (d) "That it is indorsed by leading hair specialists;
- (e) "That Nalfa will produce shades not to be obtained by any other coloring;
- (f) "That Nalfa will permanently tint gray hair or that one application only is necessary;
- (g) "That Nalfa is universally used by leading ladies of Europe and America, or is used at all by them;
- (h) "That the product Nalfa was awarded first prize at a hair coloring exhibition in Paris;
- (i) "That the product Pilocarpine hair salve will stop falling hair within three days or any other length of time, or that it will eliminate dandruff or any other ailment of the scalp;
- (j) "That said product has been approved by the most competent specials of Paris, or that it is extensively used by fashionable ladies;
- (k) "That Pilocarpine hair salve will promote the growth or thickness of eyebrows or eyelashes;
- (l) "That the product Goldalfa will lighten hair without bleaching;"

and all representations and statements equivalent or similar thereto in form or substance. (May 25, 1931.)

094. **Newspaper Publisher—Malt Sirup.**—The corporate publisher of a daily newspaper of large circulation on the Pacific coast has signed a stipulation with the Federal Trade Commission whereby it waives its right to be joined as a respondent with the brewer-vendor-advertiser of a certain malt sirup and agrees to observe, obey, and abide by any cease and desist order that may issue in the proceedings against the brewer and will also faithfully observe and be bound by the terms of any stipulation that may be entered into between the brewer and the Federal Trade Commission.

Unless the matter is settled by stipulation, the charges against the brewer will be that of branding a domestic malt sirup with a foreign name that has the capacity and tendency to deceive the purchasing public to believe the sirup is either made in Europe or of ingredients grown there. (June 1, 1931.)

095. **Newspaper Publisher—Malt Sirup.**—The corporate publisher of a daily newspaper of large circulation in the Middle West has signed a stipulation with the Federal Trade Commission whereby it waives its right to be joined as a respondent with the brewer-vendor-advertiser of a certain malt sirup and agrees to observe, obey, and abide by any cease and desist order that may issue in the proceedings against the brewer and will also faithfully observe and be bound by the terms of any stipulation that may be entered into between the brewer and the Federal Trade Commission.

Unless the matter is settled by stipulation, the charges against the brewer will be that of branding a domestic malt sirup with a foreign name that has the capacity and tendency to deceive the purchasing public to believe the sirup is either made in Europe or of ingredients grown there. (June 1, 1931.)

096. **Advertising Agency—Gland Treatment and Pep Capsules for Men.**—A New York corporation, operating an advertising agency in city of New York, heretofore placing for publication in various periodicals the advertisements of the vendor of a gland treatment and the vendor of a pep capsule, has agreed by stipulation with the Federal Trade Commission to waive its right to be joined with such vendors as a joint respondent with them, and if not so joined to be bound by, submit to, obey, and abide by any cease and desist order that may issue in the proceedings, against the vendor-advertiser and will also be bound by and faithfully observe the terms of any stipulation entered into between the advertisers and the Federal Trade Commission. (June 1, 1931.)

097. **Advertising Agency—Reducing Belts.**—A corporation engaged in conducting an advertising agency and placing for publication in various magazines and other periodicals the advertisements of a

manufacturer of an abdominal belt claiming and representing to the public that it will reduce fat, girth, and weight, has entered into a stipulation with the Federal Trade Commission wherein it is agreed that the advertising agency will—

- (a) Waive any right it may have to be a party to the proceedings against the manufacturer-advertiser;
- (b) Submit to, obey, and abide by any cease and desist order that may be issued against the manufacturer-advertiser;
- (c) Be bound by and faithfully observe the terms of any stipulation entered into between the Federal Trade Commission and the advertiser; and
- (d) Pending the disposition by the Federal Trade Commission of proceedings against the manufacturer-advertiser, it will not procure the publication and circulation of any advertisement containing any of the following statements or representations:
 - (1) That the said abdominal belt is—
 - (a) "A new youth-giving belt; or
 - (b) "A new kind of belt which actually takes off fat in an easy, gentle way—just like an expert masseur; or
 - (c) "A self-massaging belt; or
 - (d) "So constructed that when worn, every breath taken and every move made impart a constant gentle automatic massage to every inch of the abdomen; or
 - (e) "Efficient as a fat remover or reducer unless such representation is so worded or qualified as to indicate that it may not be effective in all cases; or
 - (f) "The original rubber reducing belt; or
 - (g) "Based on a principle that has the unqualified indorsement of the country's greatest athletes, professional trainers, and physicians; or
 - (h) "The easiest, safest, quickest, and cheapest way of reducing excess fat; or
 - (i) "Just the thing for reducing; or
 - (j) "Found by science to be delightfully easy way to remove excess flesh from the abdominal region, without any effort, fasting, or self-denial; or
 - (k) "A new invention; or
 - (l) "Made on the only correct principles; or
 - (m) "A substitute for massage; or
 - (n) "Highly indorsed for its healthful principles by physicians everywhere; or
 - (o) "Productive of the same results as an expert masseur; or

- (2) "That said abdominal belt, when used, will:
- (a) "Massage away fat; or
 - (b) "Rid the body of useless fat without any effort on the part of the user; or
 - (c) "Cause the user to reduce the way athletes do; or
 - (d) "Massage the abdomen while walking, climbing stairs, breathing or moving the body in any manner to an extent sufficient to remove fat; or
 - (e) "Will accomplish the same results as can be accomplished by scientific massage; or
 - (f) "Will help dissolve the fat as exercise does; or
 - (g) "Create conditions which are opposite of those which allow the fat to accumulate; or
 - (h) "Substitute solid tissues for fat; or
 - (i) "Cause the user to be filled with new energy; or
 - (j) "Reduce flesh quickly and preserve the strength too; or
 - (k) "Produce certain or rapid results; or
- (3) "That the wearing of said abdominal belt will cause any massaging, kneading, or vibratory action on the abdomen or body to an extent sufficient to break down, absorb, dissolve, or eliminate fatty tissues;
- (4) "That a trial of said belt is free, without cost, or without risk, unless the belt is delivered to the prospective purchaser for trial without requiring any deposit or payment prior to its receipt and trial;
- (5) "That the price of said belt is special, reduced or less than the regular price unless such price is lower than the prevailing price at which the belt is regularly sold at the time such offer is made;"

and all representations and statements equivalent or similar thereto in form or substance. (June 6, 1931.)

098. Advertising Agent—Home Work Sewing, Samples and outfits.—A complaint was ordered against a party advertising home work sewing when it appears the real objective of the advertiser is to sell samples and outfits and not providing profitable work for women at home.

The advertising agent that placed such advertisements for publication in magazines and other periodicals has signed a stipulation with the Federal Trade Commission wherein it agrees to waive its right to be a party to the proceedings against the advertiser;

To be bound by, submit to, and obey any cease and desist order, made against the advertiser;

To be bound by and faithfully observe the terms of any stipulation entered into between the Federal Trade Commission and the advertiser; and

To discontinue procuring the publication and circulation of said advertisements until the proceedings pending against said advertiser shall have been finally disposed of by the Federal Trade Commission. (June 6, 1931.)

099. Advertising Agency—High Blood Pressure Treatment.—Complaint has been ordered by the Federal Trade Commission against the vendor-advertiser of a remedy claimed to bring quick relief from high blood pressure.

The advertising agent placing such advertisements for publication has agreed by stipulation with the Federal Trade Commission—

- (a) That he will waive his right to be a party to the proceedings against the vendor-advertiser;
- (b) That he “will be bound by and will submit to, obey, and abide by” any cease and desist order that may issue “to the same extent and in the same manner as if he had been made a party respondent to said complaint”; and
- (c) That he will be bound by and faithfully observe the terms of any stipulation entered into between the Federal Trade Commission and the advertiser-vendor. (June 6, 1931.)

0100. Vendor-Advertiser—Gallstone Treatment.—A complaint was ordered by the Federal Trade Commission against the vendor of a remedy for gallstones, stomach distress, liver trouble, colic attacks, indigestion, etc., to be based on charges of false and misleading claims, statements, and representations to induce the public to buy the remedy.

To avoid prosecution of the charges the vendor has entered into a stipulation whereby she admits that some 26 statements recited in the stipulation “are wholly incorrect in certain respects and greatly exaggerated in others” and then agrees to discontinue making such statements or any false statements, and specifically agrees to cease and desist forever from representing—

- (a) “That by the use of ----- the sufferer will have no operation, no pain, and no more stomach distress;
- (b) “That this preparation is compounded on a scientific basis;
- (c) “That healthy bile is the only thing that has the power or that it does have any power in itself to dissolve gallstones;
- (d) “That said preparation strikes at the root of gallstone disease by restoring bile to its natural solvency, whereby it has power to absorb and disintegrate the gallstones;

- (e) "That said preparation is entirely different from any other remedy offered for stomach, liver, and gallstone ailments;
- (f) "That it acts like magic or causes gallstones to soften or dissolve;
- (g) "That within a short time one using ----- is free from gallstones;
- (h) "That it is generally recognized that healthy bile itself has power to absorb and disintegrate the gallstones or that if the bile is made pure and healthy the gallstones can not remain therein;
- (i) "That the following symptoms or any of them are indicative of gall trouble: Blues; piles; yellow, sallow, blotched, or itchy skin; bad complexion; gas on stomach or in bowels; fermentation of food generating poisonous gases in the stomach and bowels and absorbed through the blood, causing anaemia, pallor, sallow skin, poor blood, loss of memory; gloomy, depressed feeling; irritability; languor; constant desire to sigh; poor circulation; cold hands and feet; gas in stomach crowding the heart, causing palpitation; fluttering, irregular, or nervous heart; bad taste; coated tongue; light or clay-colored stools; nervous weakness; general debility; dizzy spells; yellow jaundice; vertigo; dull, heavy feeling in the head —; sleep sometimes disturbed; emaciation;
- (j) "That gall troubles are manifested by all forms of stomach, liver, and bowel ailments;
- (k) "That mistakes are common in diagnosing gallstones as appendicitis;
- (l) "That it is the most scientific, reliable, and curative combination of medical agents for the treatment of stomach, liver, and gallstone troubles that has ever been placed in the hands of sufferers;
- (m) "That ----- is a reliable home remedy which will obviate a dangerous operation;
- (n) "That it solves the problem in a scientific way no matter how long the person may have been sick or how many remedies have been tried;
- (o) "That diabetes, heart trouble, or kidney trouble may result from neglected gallstone trouble;
- (p) "That ----- by restoring the bile to a healthy condition causes it to absorb and disintegrate the gallstones and/or to prevent any more from forming;

- (q) "That the use of ----- will prevent cirrhosis of the liver, pancreatic diseases, diabetes, heart trouble, or ulceration and rupture of the gall bladder;
- (r) "That promptly after one begins to take ----- the gallstones begin to be absorbed;
- (s) "That the use of ----- means no more doctor bills, suffering, or worry;
- (t) "That never before have sufferers from these ailments been able to get a treatment that could be relied upon;
- (u) "That ----- will rid you of your suffering;"

and all representations and statements equivalent or similar thereto in form or substance. (June 1, 1931.)

0101. **Vendor-Advertiser—Abdominal Belt.**—The corporate vendor-advertiser of an abdominal belt, in advertising it as a reducing belt, made claims and representations that the Federal Trade Commission alleges were misleading and had the tendency to deceive the purchasing public.

After complaint against this company was ordered by the Federal Trade Commission, it discontinued the sale of this belt known as "inches off" and has entered into a stipulation with the Federal Trade Commission whereby it is agreed that it has "definitely discontinued the business of selling said belt in interstate commerce" and will not resume it, but if it ever does resume this stipulation "as to the facts" admitted therein may be used as evidence against them in the trial of the complaint which the commission may issue. (June 1, 1931.)

0102. **Vendor-Advertiser—Sterility Cure.**—The Osceola Co., a corporation under the laws of Florida, sold a compound known as "vivatone" and in advertising it claimed it would overcome sterility in women and enable them to "have the baby you have longed for."

The advertiser has entered into a stipulation with the Federal Trade Commission wherein it admits the statements are wholly incorrect and exaggerated and agrees to discontinue all advertising of said product under the name of "vivatone" or any other name. (June 1, 1931.)

0103. **Vendor-Advertiser—Abdominal Belt.**—A complaint was ordered by the Federal Trade Commission against the vendors of an abdominal belt to be based on charges of false and misleading advertising.

A stipulation has been entered into between the vendor and the commission wherein the vendor admits some 20 claims, representations, and statements made in their advertising, to promote sales of the belt, are "incorrect in certain respects and greatly exaggerated and misleading in others."

These vendors also agree to discontinue publication and circulation of any statement which is false or misleading and specifically agree to cease and desist forever from representing in advertisements or otherwise—

- (a) "That by the use of said belt the waistline of a prospective purchaser can be reduced by any definite amount;
- (b) "That said belt, when worn, gets at the cause of fat;
- (c) "That the wearing of said belt produces a kneading or massaging action;
- (d) "That the wearing of said belt causes fat to be dissolved;
- (e) "That excess fat will continually disappear while said belt is being worn;
- (f) "That no more fat can form while said belt is being worn;
- (g) "That a reduction of fat is guaranteed to a prospective purchaser and wearer of said belt;
- (h) "That the wearing of said belt is the natural way for a person to reduce in weight;
- (i) "That a reduction in weight can be produced by the wearing of said belt, unless such statement is qualified to indicate that such results are not possible in all cases;
- (j) "That the wearing of said belt will cause a permanent reduction of fat;
- (k) "That said belt is woven to the measure of the prospective purchaser;
- (l) "That a prospective purchaser will receive any definite amount of money from the respondents, unless such payment is actually made in the form of currency, money order, or negotiable paper;
- (m) "That a check is being transmitted to a prospective purchaser, unless there is actually transmitted a valid negotiable check for the amount stated;
- (n) "That the respondents have had experience in the manufacture or sale of said belts of a greater length of time than that actually engaged in such manufacture or sale;
- (o) "That said belts are manufactured by the respondents, unless, and until such be the fact;
- (p) "That said belt is sent on free trial unless it is sent before any payment is made by a prospective purchaser;"

and all statements and representations equivalent or similar thereto in form or substance. (June 17, 1931.)

0104. Newspaper Publisher—Rheumatism Remedy.—The corporate publisher of a daily paper circulating in the South that has been publishing the advertisements of an alleged remedy for rheumatism

and kindred ailments has agreed by stipulation with the Federal Trade Commission—

- (a) "That it waives any right it may have to be made a party respondent in the proceedings against the vendor-advertiser of such remedy;
- (b) "That it will discontinue the publication of such advertisements pending disposition by the Federal Trade Commission of such proceedings against the vendor;
- (c) "That it will obey and abide by any cease-and-desist order that may issue against the vendor; and
- (d) "That it will be bound by and faithfully observe the terms of any stipulation between the Federal Trade Commission and the vendor-advertiser. (June 17, 1931.)

0105. Vendor-Advertiser—Blood Tonic and Laxative.—A complaint was ordered against the vendor of an alleged blood tonic and a laxative by the Federal Trade Commission to be based on charges of false advertising.

The advertiser has entered into a stipulation with the commission wherein it (a corporation) admits some 14 claims and representations to be wholly incorrect or grossly exaggerated and agrees to cease and desist in the future from making, publishing and circulating any statement which is false or misleading; and specifically stipulates and agrees that it will cease and desist forever from representing—

- (a) "That respondent's tablets will cure pimples; blackheads; sores; blotches; pale, sallow complexion; blue lips; eczema; malaria; and enlarged joints or glands; or chilly, feverish, debilitated, weak, and run down condition; or that they will do more than by reason of their tonic effects assist in eliminating conditions which sometimes cause said ailments;
- (b) "That its tablets will cure nervous debility, weakness, jerking, jumping, excitable, tired and worn-out nerves, causing melancholy, fainting spells, restless nights, dizziness, poor memory, lack of energy, strength, and ambition; or that they will do anything more than by their tonic effects assist in eliminating conditions which sometimes cause such ailments and symptoms;
- (c) "That its tablets will restore nerve tissue to normal condition, banish the blues, steady the nerves, or make one feel full of pep, life, and vigor; or that the same will do more than by their tonic qualities help to restore nerve tissue;

- (d) "That its tablets cure heart weakness or kindred ailments or will in any manner affect ailments due to heart weakness, otherwise than, by their tonic effects, helping to build up the system to normal condition;
- (e) "That its tablets have a selective influence on the stomach, heart, kidneys, or liver or constitute more than a nerve tonic to assist such ailments when due to a run-down condition;
- (f) "That respondent's tablets can cure stomach trouble or pain, belching, headaches, heartburn, bloating, gas, spitting of mucus, gnawing, empty feeling, lump in stomach, bad taste or breath, lost appetite, sore mouth, coated tongue or indigestion; or that they will in anywise affect such ailments except by the building up of the system where the same are due to weakened or run-down condition;
- (g) "That its tablets will cure catarrh or kindred ailments or will in anywise be beneficial except where the catarrh is caused by run-down condition;
- (h) "That its tablets will cause one to gain 5 to 25 pounds;
- (i) "That its tablets act directly through the stomach, build up the nervous system and create nerve force, or that the nerves are in any manner affected through the use of said tablets other than by their general tonic qualities;
- (j) "That its tablets are guaranteed under United States food and drug law;
- (k) "That its tablets will restore every organ to its normal function, or any organ, or will otherwise affect same unless due to a run-down condition responding to a general tonic for the system;
- (l) "That the sample treatment is free unless said sample is sent without requiring the payment of any money for packing, postage, or otherwise, or unless the charge of packing, postage, or otherwise is stated in equally conspicuous form and terms in direct connection with such free offer;"

and all representations and statements equivalent or similar thereto in form or substance. (June 17, 1931.)

0106. Vendor-Advertiser—Crucifix Ring.—Abram Abramson, trading as the Terminal Jewelry Co. of New York City, engaged in advertising and selling a so-called "wonderful crucifix ring" and represented it would bring to the wearer his or her fondest desires in love, hope, power, health, happiness, good fortune, and wealth.

He also represented the ring was first made during the fifteenth century by a Spanish goldsmith, etc.

The Federal Trade Commission ordered a complaint against this vendor to be based on false advertising and he quit business.

He has now agreed by stipulation with the commission to cease and desist from advertising and selling such rings and if he "should ever resume or indulge in any practice violative of the provisions of this agreement, this stipulation as to the facts may be used in evidence against him. (June 17, 1931.)

0107. **Vendor-Advertiser—Catarrh, Deafness, Head Noises.**—The advertising vendor of an alleged remedy for catarrh, deafness, and head noises resulting therefrom has signed a stipulation admitting that certain claims and representations made to aid in selling such remedy are "wholly incorrect in certain respects and greatly exaggerated and misleading in others" in that the said medicinal preparation is not a cure for deafness, head noises, or catarrh; the so-called free treatment is not of sufficient quantity to be of any material value in treatment of deafness, head noises, or nasal catarrh; the doctor first prescribing it is not now living and that the preparation is not an effective treatment for deafness except that resulting from catarrh.

The vendor also admits its claims, statements, and representations have the capacity and tendency to deceive the public; and agrees to cease and desist forever from publishing and circulating any statement which is false and misleading and specifically from representing—

- (a) "That the said medicinal preparation will cure catarrh, deafness, or head noises;
- (b) "That the said medicinal preparation will rid the prospective purchaser of catarrh, deafness, or head noises unless qualified to indicate that it is not effective in all such cases;
- (c) "That said medicinal preparation is an effective treatment for deafness unless qualified to indicate that it applies only to deafness which is the result of catarrh;
- (d) "That free treatments are offered unless the medicinal preparation which is sent free to a prospective purchaser is of sufficient quantity to be of material value in the treatment of catarrh, deafness, and head noises resulting therefrom;
- (e) "That Doctor ----- is now living;"

and all representations and statements equivalent or similar thereto in form or in substance. (June 17, 1931.)

0108. **Advertising Agency—Indigestion.**—An incorporated advertising agency in New York City having heretofore placed for publi-

cation in various periodicals the advertising copy of a corporation selling an alleged remedy for indigestion and charged with making false and misleading claims and representations concerning the therapeutic value of such remedy, has agreed with the Federal Trade Commission that if the commission will not join the advertising agency with the advertiser in proceedings to be prosecuted against the advertising vendor, the advertising agency will observe and abide by the terms and provisions of any cease and desist order that may be issued against the advertising vendors and with the terms and provisions of any stipulation that may be entered into between the advertising vendor and the Federal Trade Commission if the matter should be finally adjudicated amicably by stipulation. (June 22, 1931.)

0109. Advertising Agent—Bladder Trouble.—An advertising agent placing for publication in various periodicals the advertising copy for a vendor of a treatment for bed wetting and bladder troubles, charged with making and publishing false and misleading claims and representations to induce the public to buy its treatment, has signed a stipulation with the Federal Trade Commission in which it is agreed that the advertising agent will—

- (a) Discontinue placing for publication such advertising copy pending final disposition of the charges against the vendor advertiser;
- (b) Observe and abide by the terms and provisions of any cease and desist order that may issue against the advertiser;
- (c) Observe and abide by the terms and provisions of any stipulation that may be entered into between the advertiser and the commission, if the charges against the advertiser should be adjudicated by stipulation;

all this upon condition that the commission refrains from joining the advertising agent with the advertiser as a respondent to defend the charges made against the advertiser. (June 22, 1931.)

0110. Magazine Publisher—Watches and Jewelry, Perfumes, etc.—Tobacco Habit.—The corporate publisher of a magazine of wide circulation heretofore printing and publishing the advertisements of three advertising vendors selling and offering for sale questionable watches and jewelry, perfumes, etc., and the vendor of an alleged cure for the tobacco habit, has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the publisher a joint respondent with the advertising vendors that it, the publisher, will—

- (a) Waive its right to be joined as a party respondent;
- (b) Immediately discontinue and cease and desist from the publication and circulation of such advertising copy pending the disposition of the cases against the respective advertisers; and

(c) Observe and abide by the terms and provisions of any cease and desist orders that may be issued by the commission against the advertisers, and if any of the cases are adjudicated by stipulation that it, the publisher, will faithfully observe and abide by the terms and provisions of such stipulations. (June 24, 1931.)

0111. **Magazine Publisher—Watches, Jewelry, Perfumes, etc.—Tobacco Habit.**—The corporate publisher of a magazine of wide circulation heretofore printing and publishing the advertisements of three advertising vendors selling and offering for sale questionable watches and jewelry, perfumes, etc., and the vendor of an alleged cure for the tobacco habit, has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the publisher a joint respondent with the advertising vendors that it, the publisher, will—

(a) Waive its right to be joined as a party respondent;

(b) Immediately discontinue and cease and desist from the publication and circulation of such advertising copy pending the disposition of the cases against the respective advertisers; and

(c) Observe and abide by the terms and provisions of any cease and desist orders that may be issued by the commission against the advertisers, and if any of the cases are adjudicated by stipulation that it, the publisher, will faithfully observe and abide by the terms and provisions of such stipulations. (June 24, 1931.)

0112. **Magazine Publisher—Watches, Jewelry, Perfumes, etc.—Tobacco Habit.**—The corporate publisher of magazines of wide circulation heretofore printing and publishing the advertisements of three advertising vendors selling and offering for sale questionable watches, and jewelry, perfumes, etc., and the vendor of an alleged cure for the tobacco habit, has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the publisher a joint respondent with the advertising vendors that it, the publisher, will—

(a) Waive its right to be joined as a party respondent; and

(b) Observe and abide by the terms and provisions of any cease and desist orders that may be issued by the commission against the advertisers, and if any of the cases are adjudicated by stipulation that it, the publisher, will faithfully observe and abide by the terms and provisions of such stipulations. (June 24, 1931.)

0113. **Magazine Publisher—Bashfulness.**—The corporate publisher of a magazine of wide circulation, among those interested in the moving pictures, that has heretofore published and circulated the advertisements of the vendor of a cure for bashfulness, has agreed with the Federal Trade Commission by stipulation—

(a) That it will discontinue and cease and desist from the publication and circulation of such advertisements pending the disposition of the case against the advertiser;

(b) That it will observe and abide by the terms and provisions of any cease and desist order that may be issued against the advertiser; and

(c) That it will likewise observe and abide by the terms and provisions of any stipulation that may be entered into between the advertiser and the commission, of which it has notice, upon condition that the commission will not make the publisher a joint respondent with the advertiser. (June 25, 1931.)

0114. **Magazine Publisher—Developing Cream.**—The corporate publisher of two magazines of wide circulation printing and circulating the advertising copy for the advertising vendor of an alleged cream to develop various parts of the body has entered into a stipulation with the Federal Trade Commission whereby it is agreed that if the commission will refrain from joining this publisher with the advertiser in the proceedings to be instituted against the advertiser, based upon charges of false and misleading claims, statements, and representations to sell such cream, the publisher will observe and abide by the terms and provisions of any cease and desist order that may be issued by the commission against the advertiser; or if the case against the advertiser should be adjudicated by stipulation, the publisher will observe the terms and provisions of such stipulation and not publish any advertising copy in violation thereof. (June 25, 1931.)

0115. **Newspaper Publisher—High Blood Pressure.**—The corporate publisher of a newspaper of wide circulation in the South, heretofore publishing and circulating advertisements of an alleged doctor claiming to offer a competent treatment for high blood pressure, and charged in a case pending before the commission with making false and misleading statements and representations to effect the sale of such a remedy, has agreed with the Federal Trade Commission by stipulation that if the commission will not join the publisher with the advertiser as a respondent in the pending proceedings, that it, the publisher—

(a) Will immediately discontinue and cease and desist from the publication and circulation of said advertisements pending disposition of the case against the advertiser; and

(b) Will observe and abide by the terms and provisions of any cease and desist order that may issue in such proceedings against the advertiser. (June 25, 1931.)

0116. **Vendor-Advertiser—Bed Wetting and Lost Vitality.**—The advertising vendor, C. H. Rowan, of Milwaukee, Wis., operating

under the trade name of Zemeto Co. has stipulated with the Federal Trade Commission and admitted that some eight claims and representations "are wholly incorrect in certain respects and greatly exaggerated and misleading in others" and have the capacity and tendency to deceive the public.

This advertising-vendor has agreed to cease and desist forever from publishing and circulating—

- (a) That bed wetting will be stopped by the use of said medicinal preparation, unless qualified to indicate that it will not be effective except where the cause is due to lack of tone of the sphincter muscle of the bladder and should not then be expected to bring relief in all cases;
- (b) That lack of control of the urine will be banished and/or corrected by the use of said medicinal preparation, or
- (c) That said medicinal preparation goes to the seat of the trouble, or
- (d) That said medicinal preparation will restore vitality unless such statements are so modified as to indicate that they apply to the urinary tract only, or
- (e) That said medicinal preparation has been used with successful results in cases considered hopeless after treatment by doctors, chiropractors, and others, or
- (f) That said medicinal preparation is the only bed-wetting medicine that contains no poison or that can do no harm, or
- (g) That said medicinal preparation will rid the user of enuresis, or
- (h) That the results obtained by the use of said medicinal preparation are permanent;

and all representations and statements equivalent thereto in form or substance. (June 25, 1931.)

0117. Newspaper Publisher—Stomach, Liver, Kidneys, Bowels, Glands, Blood.—The publisher of a daily newspaper, with a large circulation in the Middle West, publishing and circulating the advertisements of the vendor of "a medicine" claimed to act on the stomach, liver, kidneys, bowels, glands, and blood, made according to a formula alleged to be "powerful yet safe and harmless" has agreed by stipulation with the Federal Trade Commission—

- (a) To abide by the terms and provisions of any cease and desist order that may be issued against the advertising vendor of such medicine; and

- (b) To observe and abide by the terms and provisions of a stipulation between the advertiser and the Federal Trade Commission, if the case should be settled by stipulation and a revision of the advertising claims of this vendor made to bring his representations within the limits of the truth.

This advertising vendor is charged with making and publishing false and misleading statements and representations to deceive and mislead the public into buying his medicine, and this case is now pending before the commission. (June 26, 1931.)

0118. Newspaper Publisher—Vocational Instruction Bureau.—The publisher of a newspaper with a large national circulation heretofore printing and circulating the advertisement of a certain vocational instruction bureau charged before the commission with making false and misleading claims, statements, and representations to secure students has entered into a stipulation with the Federal Trade Commission whereby the publisher agrees—

- (a) To immediately discontinue and cease and desist from the publication and circulation of said advertisements pending the disposition of the case against the advertiser;
- (b) To observe and abide by the terms and provisions of any cease and desist order that may be issued against the advertiser;
- (c) To observe and abide by the terms and provisions of any stipulation entered into between the advertiser and the commission if the terms should be settled by stipulation. (June 26, 1931.)

0119. Vendor-Advertiser—Patching and Mending Cement—Queen City Laboratories, of Cincinnati, Ohio.—Advertising and selling a cement to be used for patching and mending clothing known to the trade as “no stitch” has admitted that many representations made by it to the public to induce men and women to undertake to sell from house to house this mending cement are wholly incorrect in certain respects and greatly exaggerated and misleading in others.

The respondent has agreed by stipulation to cease and desist from publishing and circulating false or misleading statements and has specifically agreed that it will forever cease and desist from designating, labeling, branding, or otherwise designating its product as “sewing” and from representing in advertisements and otherwise—

- (a) That the prospect will or can make \$2 every hour;
- (b) That the respondent maintains a laboratory in which the product no stitch is mixed or prepared for sale;

- (c) That the respondent is the sole licensee or patentee of said product in the United States;
- (d) That no stitch is a patented product;
- (e) That the prospect will average \$50 per week either in spare time or otherwise, selling no stitch;
- (f) That exclusive sales territory is being held open for the prospective purchaser, where such representation does not disclose the fact that such territory is given to the first person who buys a specified quantity of the product;
- (g) That the prospect will make easily or at all \$75 to \$100 weekly by the selling of no stitch;
- (h) That an unusual opportunity is offered the prospect to cash in or be among the first to make big money out of said preparation;
- (i) That without regard to selling experience, environment, or education, the prospect will be shown how to make big, quick, cash profits right from the start of \$75 to \$125 a week or at all;
- (j) That the prospect will make or has any likelihood of making from \$12 to \$18 per day profit;
- (k) That the said product is taking like wildfire;
- (l) That a free trial offer is made, where in fact said offer is but a money-back agreement;
- (m) That a selling outfit is given free when in fact the price of same is collected in advance, to be refunded only when orders totaling two gross tubes of no stitch have been turned in;
- (n) That the selling of said product will make for the prospect any extreme, unduly exceptional, or fantastically possible earnings above those reasonably made in the ordinary canvassing for commodities;

and all representations and statements similar thereto in form or substance.

The respondent has also agreed to discontinue the use of the word "laboratories" as part of its trade name until such time as it actually conducts a laboratory for research or manufacturing purposes. (June 26, 1931.)

0120. Vendor-Advertiser—Croup, Colds, Catarrh, etc.—Salve.—The advertising vendor of a certain salve claimed and represented that it was an effective treatment for the relief of croup, head colds, catarrh, sore throat, headache, bruises, cuts, sores, rheumatic pains or piles, eczema, tetter, coughs, toothache, sore or swollen joints, and that it was a powerful germ-killing salve and would remove seed warts and corns.

He also offered a reward of \$50 if the salve failed to do what he claimed for it.

This advertiser has admitted in a stipulation filed with the commission that said statements and claims are wholly incorrect in certain respects and greatly exaggerated and misleading in others, and that said salve is not an efficacious treatment for the relief of the ailments mentioned. He also admits that the salve is not a powerful germ-killing salve and that it will not remove seed warts or all classes of corns; and he agrees in the stipulation filed to cease and desist making such claims and representations for and concerning the salve he offers for sale. He also admits that the reward offered was subject to unreasonable conditions not disclosed in the advertising matter, and has agreed to quit offering such a reward unless all of the essential conditions of such offer are disclosed in the advertisement. (September 16, 1931.)

0121. Magazine Publisher—**Bashfulness and Nerves.**—The publisher of a magazine of wide circulation among the film fans published and circulated the advertisement of an advertiser claiming to have a cure for bashfulness and nerves. Complaint against this advertiser has been ordered by the Federal Trade Commission and this publisher has agreed by stipulation with the commission to waive all right to intervene he may have in the proceedings against the advertiser, abide by the terms and conditions of any cease and desist order that may be issued by the commission and also agrees to be bound by and faithfully observe the terms of any stipulation that may be entered into between the advertiser and the commission if the commission will refrain from making the publisher a joint respondent with the advertiser in the proceedings against him. (September 16, 1931.)

0122. Magazine Publisher—**Bashfulness and Nerves.**—The publisher of a magazine of wide circulation among the film fans published and circulated the advertisement of an advertiser claiming to have a cure for bashfulness and nerves. Complaint against this advertiser has been ordered by the Federal Trade Commission and this publisher has agreed by stipulation with the commission to waive all right to intervene he may have in the proceedings against the advertiser, abide by the terms, and conditions of any cease and desist order that may be issued by the commission and also agrees to be bound by and faithfully observe the terms of any stipulation that may be entered into between the advertiser and the commission if the commission will refrain from making the publisher a joint respondent with the advertiser in the proceedings against him. (September 16, 1931.)

0123. Periodical Publisher—**Tires and Tubes; Home Work (Dress Shields); salve and premiums; Treatments of Fits and Liquor Habit.**—The publisher of a periodical of wide circulation in the Middle West, accepting, publishing, and circulating the advertisements of two com-

panies offering automobile tires and tubes direct to the consumers at greatly reduced prices; a company offering home work making dress shields; a company offering for sale and seeking agents to sell a certain salve, advertising premiums of great value for small orders; another company offering an alleged effective treatment for fits; and another offering a quick cure for the liquor habit; has stipulated with the commission that if the commission will refrain from making the publisher a joint respondent in proceedings against these advertisers that it, the publisher, will observe and obey the provisions of any cease and desist order that may be issued against any or all of the advertisers, and if any of the cases against the advertisers are adjudicated by stipulation then this publisher will faithfully observe and abide by the terms and provisions of such stipulations of which it may have notice. (September 16, 1931.)

0124. **Newspaper Publisher—Malt Sirup.**—The publisher of a large daily paper of wide circulation in the Middle West, publishing and circulating the advertisement for a certain malt sirup, has entered into a stipulation with the Federal Trade Commission whereby it agrees that if the commission will refrain from making the publisher a joint respondent with the brewing company in proceedings pending before the commission against the brewing company that it, the publisher, will abide by any cease and desist order that may issue against the brewing company and will also observe, obey and abide by the terms and provisions of any stipulation that may be entered into between this advertiser and the commission of which it may have notice. (September 16, 1931.)

0125. **Magazine Publisher—Correspondence Courses for Government Positions.**—The publisher of a magazine of wide circulation among sportsmen published and circulated the advertisement of an alleged institute offering correspondence courses to prepare men and women for successfully taking civil-service examinations for Government positions.

This publisher has agreed by stipulation filed with the Federal Trade Commission that it will discontinue the publication and circulation of such advertising copy pending disposition of the case against the advertiser, and that if the commission will refrain from making this publisher a joint respondent with the advertiser, it, the publisher, will obey the terms of any cease and desist order that may be issued against the advertiser, and if the case against the advertiser is settled by stipulation the publisher will observe and abide by the terms and provisions of any such stipulation of which it has notice. (September 16, 1931.)

0126. **Periodical Publisher—Treatment for Men.**—The publisher of a sporting periodical of wide circulation published and circulated the

advertisement of the vendor of a treatment for men against whom complaint has been ordered by the Federal Trade Commission.

This publisher has agreed by stipulation with the commission that if the commission will refrain from making it joint respondent with this advertiser in the proceedings pending against it, the publisher will discontinue publishing and circulating this advertisement pending disposition of proceedings against the advertiser and will also obey and abide by the terms of any cease and desist order that may be issued in the case, and if the case against the advertiser should be disposed of by stipulation, then it, the publisher, will faithfully observe and abide by the terms and provisions of any such stipulation of which it has notice. (September 16, 1931.)

0127. **Magazine Publisher—Correspondence Courses.**—The publisher of a household magazine of wide circulation throughout the United States publishing and circulating the advertisement of an alleged bureau offering correspondence courses to prepare men for positions in the railroad service—firemen, brakemen, baggagemen, porters, etc.—and offering assistance to them in securing employment, has stipulated with the Federal Trade Commission that if the commission will refrain from making the publisher a joint respondent with the advertiser in proceedings pending against the advertiser, the publisher will abide by the terms of any cease and desist order that may issue against the advertiser, and if the case is adjudicated by stipulation the publisher will observe the terms of any such stipulation of which it has notice. (September 16, 1931.)

0128. **Magazine Publisher—Correspondence Courses.**—The publisher of a household magazine of wide circulation throughout the United States, publishing and circulating the advertisement of an alleged bureau offering correspondence courses to prepare men for positions in the railroad service—firemen, brakemen, baggagemen, porters, etc.—and offering assistance to them in securing employment, has stipulated with the Federal Trade Commission that if the commission will refrain from making the publisher a joint respondent with the advertiser in proceedings pending against the advertiser, the publisher will abide by the terms of any cease and desist order that may issue against the advertiser, and if the case is adjudicated by stipulation the publisher will observe the terms of any such stipulation of which it has notice. (September 16, 1931.)

0129. **Magazine Publisher—Developing Cream.**—The publisher of a magazine of wide circulation printing and circulating the advertisement of the vendor of a cream alleged to have the power to develop the human body, busts, arms, legs, or neck, has agreed by stipulation filed with the commission that if the commission will refrain from making this publisher a joint respondent with the advertiser in proceedings pending before the commission against the advertiser, the publisher

will obey the terms of any cease and desist order that may issue against the advertiser, and if the case is settled by stipulation then the publisher will faithfully observe and be bound by all the terms and provisions of any stipulation of which it has notice. (September 16, 1931.)

0130. **Vendor-Advertisers—Tobacco Habit.**—F. A. Flinn et al.,¹ copartners, trading under the name of Antitobacco League, advertiser-vendors of an alleged treatment and remedy for the tobacco habit, have entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading, and that hereafter the vendors will cease and desist from making any representations that are false and misleading, and specifically, from representing that the use of such medicinal preparation will kill or stop the tobacco habit; rid one of the craving; overcome the conditions that cause the craving; produce permanent results, or accomplish more than to merely aid the user to quit the habit and temporarily make tobacco distasteful;

That the average cigarette smoker becomes emasculated or lacking in vigor; or that one of the most frequent effects of excessive smoking is the gradual failing of eyesight;

And all representations equivalent or similar thereto in form or substance.

These vendors also agree to cease and desist using the trade name, "Antitobacco League," or other trade name that will import or imply that they are engaged in a business not operated for profit; and also from using any title or designation following signatures to any communication in a manner to indicate the person is an officer of any league or association. (September 16, 1931.)

0131. **Vendor-Advertiser—Nerve Ailments.**—L. Heuman & Co., New York, N. Y., vendor-advertiser of a medical treatment for nerve ailments has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false and misleading, and specifically from representing—

- (1) That said medical preparation designated as nerosol, or the same preparation designated by any other name,
 - (a) Will banish or cure nervous disorders; or
 - (b) Is an effective treatment for nerve exhaustion, loss of energy, worry, overwork, fatigue, sleeplessness, or lack of vitality; or
 - (c) Is a double treatment; or

¹ Other partners include Rex O. Pettegrew, Elmer E. Cram, Mrs. Albert Rasmuss, Mrs. R. W. Flinn, and Miss Helen Bates.

- (d) Will effect a permanent relief; or
 - (e) Is compounded, prepared, or manufactured by Reverend Heuman or under his direction; or
 - (f) Is compounded of ingredients from all over the world, unless and until such be the fact; or
 - (g) Is approved by the United States Government or any branch thereof; or
 - (h) Is the only right treatment; or
 - (i) Will restore health, strength, or vitality to the user.
- (2) That Reverend Heuman is back of any guarantee statement or promise made by respondent;
 - (3) That Reverend Heuman is alive;
 - (4) That any person, firm, company, or corporation is back of any guarantee statement or promise made by respondent, unless and until such be the fact;
 - (5) That any promise by respondent is a guarantee or a bond;
 - (6) That personal attention is given to any order or communication from a prospective purchaser, unless and until such be the fact;

and all representations and statements equivalent or similar thereto in form or substance.

Also agrees to quit circulating a warranty in the form of a guarantee or bond, unless actually guaranteed by a third party. (September 16, 1931.)

0132. **Vendor-Advertiser—Development Treatment.**—Mlle. Sophie Koppel, New York, N. Y., the vendor-advertiser of a treatment designated "growdina," for the development of the bust, neck, arms, limbs, and figure, has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading, and that hereafter the vendor will cease and desist from making any representations that are false or misleading, and, specifically, from representing that—

- The preparation "growdina" is a tissue builder;
- That the preparation was discovered by Mlle. Sophie Koppel;
- That Mlle. Sophie Koppel is a famous Parisian beauty culturist;
- That said preparation has a reputation on two continents, or that it has now been introduced into the United States;
- That growdina is scientifically prepared;
- That it introduces a nourishing tissue-building food into the flesh which stimulates cell growth;
- That it produces any growth of glands;

That it fills out hollow or undeveloped spots in the body, or will in itself develop new contour or figure, unaided by massaging, diet, and exercise;

That it agitates or otherwise affects the white corpuscles so that they will invade the tissue, and stimulates the fat cells;

That it will feed or in any other manner affect under nourished and underdeveloped fat cells;

and all representations equivalent or similar thereto in form or substance. (September 16, 1931.)

0133. **Vendor-Advertiser—Tapeworm.**—Dr. C. M. Coe (Inc.), St. Louis, Mo., the vendor-advertiser of medical treatment for tapeworm has agreed in a stipulation with the Federal Trade Commission that he has discontinued all advertising and will not hereafter advertise said medicine and will limit sales to filling unsolicited orders. (September 16, 1931.)

0134. **Vendor-Advertiser—Kidney, Bladder, Prostate Trouble.**—H. W. Barton, trading as W. B. Way Co., Kansas City, Mo., the vendor-advertiser of medicinal preparations for the treatment of kidney, bladder, and prostate trouble has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false and misleading and specifically from representing—

(a) That kidney, bladder, or prostate trouble can be stopped by the use of said medicinal preparations;

(b) That said medicinal preparations constitute a competent treatment for prostate gland troubles;

(c) That said medicinal preparations constitute a competent treatment for major ailments of the kidneys or bladder;

and all representations equivalent or similar thereto in form or substance.

Also agrees to cease using the word "prostatitis" in designating such medical preparations. (September 16, 1931.)

0135. **Vendor-Advertiser—Skin Lotion.**—D. D. D. Corporation, Batavia, Ill., the vendor-advertiser of a skin lotion designated "D. D. D." has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading, and that hereafter the vendor will cease and desist from making any representations that are false or misleading, and specifically from representing that said skin lotion—

(a) Is efficacious in the treatment of itching skin, unless such statement is qualified to indicate that it does not apply to all cases of itching skin; or

- (b) Is a competent treatment for "any form of skin disease; or
- (c) Is a competent treatment for eczema or ulcers; or
- (d) Is a competent treatment for blotches, pimples, or other skin blemishes, unless such statement is qualified to indicate that it does not apply to all forms of pimples or skin blemishes;

and all representations equivalent or similar thereto in form or substance. (September 16, 1931.)

0136. Vendor-Advertiser—Glass "Diamond" Crystals.—Alice Gutterman, doing business as Crystal Diamond Co., New York City, the vendor-advertiser of glass crystals simulating diamonds and designated "French diamonds" has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading, and specifically from representing that—

- (a) Respondent has nothing to sell, so long as the attempt is made to sell in addition ring and stick-pin mountings for such crystals;
- (b) That such crystals will be distributed only to readers of the publication in which the advertisement appears;
- (c) That only two crystals will be sent to the same address, unless additional offers from the same address are refused when received;
- (d) That such crystals are sent "free," unless the same are sent without the payment of any money for packing, postage, or otherwise;
- (e) That respondent is a jeweler, or deals in jewelry that is either exclusively designed or of the better kind;
- (f) That any offer is "special" unless the same is different from the usual offer made and more favorable in its terms;
- (g) That so-called gifts of imitation pearls, knives or other articles are sent free to persons sending cash with order for mounting, when the prices of such "gifts" are included in the total purchase price of said mounting;
- (h) That a time limit has been fixed for accepting an offer as to price, terms, or "gifts," unless such acceptances are refused if received after expiration of such time limit;

and all representations equivalent or similar thereto in form or substance.

Respondent also agrees to quit using the word "diamond" as part of her trade name. (September 16, 1931.)

0137. **Vendor-Advertiser—Soaps, Washing Powder, Toilet Articles.**—John J. Black, doing business as Buss-Beach Co., Chippewa Falls, Wis., the vendor-advertiser of soaps, washing powder, and sundry other toilet and household merchandise, has entered into a stipulation with the Federal Trade Commission, wherein he represents that he has discontinued advertising for agents under former methods, and agrees not to resume same.

Respondent also agrees to cease representing that he manufactures any lines of goods which he does not in fact manufacture; and that he has general distribution centers for the sale of same, unless such method of distribution in fact exists. (September 16, 1931.)

0138. **Vendor-Advertiser—Cosmetic.**—Nell Cameron, trading as Cloree, of New York, the vendor-advertiser of a cosmetic preparation designated as "Cloree lip-reducing cream," has signed an agreement filed with the Federal Trade Commission declaring she has discontinued all advertising and will not again advertise this article under the name of "Cloree lip-reducing cream" or any other name. She also agrees to discontinue its sale except to fill unsolicited orders. (September 16, 1931.)

0139. **Vendor-Advertiser—Bust Developing and Restoration Treatment.**—C. A. Davis, trading as Jennie L. Cook Co., Los Angeles, Calif., the vendor-advertiser of a bust developing and restoration treatment, consisting of a massage cream designated as "orange flower flesh food"; a tonic designated "gland aid tablets," and a laxative tablet, together with rules and instructions for their use, has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading, and that hereafter the vendor will cease and desist from making any representations that are false and misleading, and specifically from representing—

- (a) That respondent is a woman; or
- (b) That the statements made in respondent's literature are from one woman to another; or
- (c) That the Jennie L. Cook Co. or any other enterprise operated by respondent under any name is composed of Parisian beauty culturists, or
- (d) That said treatment or any part thereof is
 - (1) Parisian, or
 - (2) French, or
 - (3) Scientific, or
 - (4) Made according to a French formula, or
 - (5) A constitutional vitalizer, or
 - (6) A tissue builder;
- (e) That by the use of said treatment or any part thereof,

- (1) A perfect figure can be developed, or
- (2) A symmetrical figure can be developed, or
- (3) The human body can become properly proportioned, or
- (4) Grace can be acquired, or
- (5) Hollows in the body can become filled, or
- (6) The health can be improved, or
- (7) The complexion can be improved, or
- (8) Every defect that retards full development can be removed,
or
- (9) The blood will be purified, or
- (10) Power or strength will be immediately acquired, or
- (11) The bust can be developed to any definite extent, or
- (12) Wrinkles can be removed from the face; or
- (f) That the mere application of said massage cream will develop any part of the body; or
- (g) That said massage cream has any therapeutic value as a skin food or flesh food; or
- (h) That said treatment will cause the user to become more beautiful, or beautify any part of the body to which applied; or
- (i) That said treatment or any part thereof is curative or restorative;
- (j) That said treatment or any of the elements of which it is composed goes to the seat of any of the human organs; or
- (k) That any results to be obtained by the use of said treatment are certain; or
- (l) That any development to be obtained by the use of said treatment is even or permanent; or
- (m) That the use of said treatment will produce equally satisfactory results to all users, regardless of age;

and all representations equivalent or similar thereto in form or substance. (September 16, 1931.)

0140. Vendor-Advertiser—Hair Tonic.—A. R. Smith, trading as Sunlight V. Laboratory, Ramsey, Ill., the vendor-advertiser of "sunlight hair tonic" has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading, and that hereafter the vendor will cease and desist from making any representations that are false and misleading, and specifically from representing that—

The application of said preparation to the hair will restore color; or

That said preparation is a hair-color restorer; or

That all shades of color can be obtained from one bottle of said preparation; or

That the application of said preparation to the hair will produce a natural color; or

That the application of said preparation to the hair will restore vigor or luster to the hair or cause the hair to become vigorous or lustrous; or

That any natural color can be imparted to the hair by the application of said preparation;

That said preparation is the only preparation designed for the same purpose that is harmless;

That said preparation is a cure for unsatisfactory hair;

and all representations equivalent or similar thereto in form or substance.

Respondent also agrees to quit using the word "laboratory" as part of his trade name. (September 16, 1931.)

0141. **Vendor-Advertiser—Fits, Epilepsy, Convulsions.**—Katherine Steel, trading as Victoria Manufacturing Co., Detroit, Mich., the vendor-advertiser of a treatment for fits, epilepsy, and convulsions, has entered into a stipulation whereby she asserts she has discontinued advertising said treatment and agrees that she will not hereafter advertise or sell said treatment in interstate commerce. (September 16, 1931.)

0142. **Advertising Agency—Wrinkle Remover.**—An advertising agency preparing and placing for publication in various periodicals the advertising copy of the vendor advertiser of an alleged wrinkle remover has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the advertising agency a joint respondent with the advertiser in proceedings that will charge the vendor-advertiser with making false and misleading claims, statements, and representations to the public, to induce the public to buy his product, that the said advertising agency will—

(a) Waive any right it may have to intervene or be made a joint respondent with the advertiser;

(b) Waive any right it may have to assert and defend any right it may have in the subject matter;

(c) Be bound by and submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(d) If the matter is adjusted by stipulation between the advertiser-vendor and the Federal Trade Commission, this advertising agency will observe and abide by all the terms and provisions of such stipulation of which it has notice. (September 16, 1931.)

0143. **Advertising Agency—Hair Coloring Pencil.**—An advertising agency preparing and placing for publication in various periodicals the

advertising copy of the vendor-advertiser of a pencil to color gray hair, has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the advertising agency a joint respondent with the advertiser in proceedings that will charge the vendor-advertiser with making false and misleading claims, statements, and representations to the public to induce the public to buy his product, that the said advertising agency will—

(a) Waive any right it may have to intervene or be made a joint respondent with the advertiser;

(b) Waive any right it may have to assert and defend any right it may have in the subject matter;

(c) Be bound by and submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(d) If the matter is adjusted by stipulation between the advertiser-vendor and the Federal Trade Commission, this advertising agency will observe and abide by all the terms and provisions of such stipulation of which it has notice. (September 16, 1931.)

0144. Advertising Agency—Correspondence Courses for Civil Service.—An advertising agency preparing and placing for publication in various periodicals the advertising copy of the vendor-advertiser of correspondence course of tutoring students for civil-service examinations has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the advertising agency a joint respondent with the advertiser in proceedings that will charge the vendor-advertiser with making false and misleading claims, statements, and representations to the public to induce the public to buy his product, that the said advertising agency will—

(a) Waive any right it may have to intervene or be made a joint respondent with the advertiser;

(b) Waive any right it may have to assert and defend any right it may have in the subject matter;

(c) Be bound by and submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(d) If the matter is adjusted by stipulation between the advertiser-vendor and the Federal Trade Commission, this advertising agency will observe and abide by all the terms and provisions of such stipulation of which it has notice. (September 16, 1931.)

0145. Newspaper Publisher—Radium Appliance.—The publisher of a daily newspaper of large circulation in the vicinity of Washington, D. C., printing and circulating in his periodical the advertisements of the vendor of an appliance claimed to have radium in quantities of great therapeutic value, alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to intervene or be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (September 16, 1931.)

0146. Newspaper Publisher—Bladder and Kindred Ailments.—The publisher of a daily newspaper of large circulation in the vicinity of Washington, D. C., printing and circulating in his periodical the advertisements of the vendor of a medical treatment for bladder and kindred ailments alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to intervene or be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (September 16, 1931.)

0147. Newspaper Publisher—Rheumatism.—The publisher of a daily newspaper of large circulation in the vicinity of Baltimore, Md., printing and circulating in his periodical the advertisements of the vendor of treatment for rheumatism alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to intervene or be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (September 16, 1931.)

0148. **Magazine Publisher—Saline Laxative.**—The publisher of a farm magazine in the South, printing and circulating in his periodical the advertisements of the vendor of a saline laxative in solution alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to intervene or be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (September 16, 1931.)

0149. **Magazine Publisher—Medical Inhalation, Skin Diabetes, Asthma, Catarrh, etc., Treatments—Puzzle Advertisements.**—The publisher of a home magazine of national circulation printing and circulating in his periodical the advertisements of the vendors of an appliance for inhaling medical treatments; a skin treatment; a remedy for diabetes; a treatment for asthma, catarrh, and kindred ailments; and a puzzle form advertisement for a publisher to secure a mailing list alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to intervene or be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (September 16, 1931.)

0150. **Newspaper Publisher—Electric-Therapeutic Appliances—Gland Treatments—Constipation.**—The publisher of a daily newspaper of large circulation in California printing and circulating in his periodical the advertisements of the vendors of an appliance claimed to have electric-therapeutic value; a gland treatment; a magnetic

appliance for the treatment of the prostate gland; and a cure for constipation alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to intervene or be made a joint respondent with the advertisers;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (September 16, 1931.)

0151. **Advertising Agency—Rheumatism.**—An advertising agency preparing and placing for publication in various periodicals the advertising copy of the vendor-advertiser of treatment for rheumatism has agreed by stipulation with the Federal Trade Commission that if the commission will refrain from making the advertising agency a joint respondent with the advertiser in proceedings that will charge the vendor-advertiser with making false and misleading claims, statements, and representations to the public to induce the public to buy his product, that the said advertising agency will—

(a) Waive any right it may have to intervene or be made a joint respondent with the advertiser;

(b) Waive any right it may have to assert and defend any right it may have in the subject matter;

(c) Be bound by and submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(d) If the matter is adjusted by stipulation between the advertiser-vendor and the Federal Trade Commission, this advertising agency will observe and abide by all the terms and provisions of such stipulation of which it has notice. (September 16, 1931.)

0152. **Vendor-Advertiser—Mole, Wart, and Growth Remover.**—Dr. William Davis, the vendor-advertiser of a mole, wart, and growth remover has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that said treatment will banish moles or big growths or that it is safe to use

except under the supervision of a physician and all representations equivalent or similar thereto in form or substance. (September 16, 1931.)

0153. Vendor-Advertiser—Perfume.—A. Abramson, trading as Parisian Products Co., of New York City, the vendor-advertiser of a perfume designated "charm d'amour" has entered into a stipulation with the Federal Trade Commission whereby he represents he has quit advertising said perfume and agrees to not advertise the same or sell it except to fill unsolicited orders. (September 16, 1931.)

0154. Vendor-Advertiser—Asthma.—Atlas Medic Co., Buffalo, N. Y., the vendor-advertiser of a medicinal treatment for asthma has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) That by the use of said medicinal preparation asthma, catarrh, or bronchitis can be stopped; or
- (b) That prospective purchasers can, by the use of samples of said medicinal preparation, prove that asthma, catarrh, or bronchitis can be overcome; or
- (c) That asthma, hay fever, bronchitis, or catarrh can be overcome by the use of said medicinal preparation; or
- (d) That sufferers from asthma, hay fever, bronchitis, or catarrh can regain or restore health by the use of said medicinal preparation; or
- (e) That persons can recover from asthma, hay fever, bronchitis, or catarrh by the use of said medicinal preparation; or
- (f) That the use of said medicinal preparation under directions of respondent will make it possible for every sufferer from asthma to regain health or strength and all representations equivalent or similar thereto in form or substance. (September 21, 1931.)

0155. Vendor-Advertiser—Books and Pictures.—Philip H. Simmons, trading as Park Art Co., and Universale Co., the vendor-advertiser of books and pictures has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that said books, pamphlets, or pictures were imported from France and all representations equivalent or similar thereto in form or substance. (September 21, 1931.)

0156. Newspaper Publisher—Tonic and Laxative.—The publisher of a newspaper printing and circulating in his periodical the adver-

tisements of the vendor of a tonic and laxative alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in any subject matter;

(3) To be bound by, submit to, obey and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such stipulation of which he has notice. (October 5, 1931.)

0157. **Newspaper Publisher (Indiana)—Bladder Treatment.**—The publisher of a newspaper printing and circulating in his periodical the advertisements of the vendor of a bladder treatment alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees:

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (October 5, 1931.)

0158. **Vendor-Advertiser—Liquid Cement.**—J. E. Johnson & Co., Chicago, Ill., the vendor-advertiser of a liquid cement has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that—

Dealers or agents can earn more than the average earnings of the average dealers or agents under normal or average conditions;

and all representations equivalent or similar thereto in form or substance. (October 5, 1931.)

0159. **Vendor-Advertiser—Asthma.**—The vendor-advertiser of a treatment for asthmatic attacks has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that—

Asthma attacks can be stopped by the use of said treatment; and all representations equivalent or similar thereto in form or substance. (October 5, 1931.)

0160. **Vendor-Advertiser—Kidney and Bladder Weakness—Rheumatism.**—The Lexoid Co., Cleveland, Ohio, the vendor-advertiser of "threefold Lexoid treatment" for kidney and bladder weakness, muscular and subacute rheumatism and kindred ailments, and Dr. H. Michel DeWerth, individually, and as physician in charge, have entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) That said H. Michel DeWerth is a specialist of 20 years' experience or of any other length of time in kidney, bladder diseases, muscular or subacute rheumatism;
That he or any other physician personally advises the users of said treatment, as a specialist, unless and until such be in fact the case;
- (b) That if you are suffering with kidney trouble, bladder trouble, or rheumatism Lexoid will make you well and strong again;
That where all other treatments failed this treatment succeeded;
That all organs affected in kidney trouble, bladder irritation, rheumatic pains, and worn-out feeling are treated separately by said compound, "threefold Lexoid treatment;"
That said treatment is effective in the most chronic, stubborn, and long-standing cases;
That it eliminates organic poisons and encourages the kidneys to properly filter the blood;
That the Lexoid treatment relieves rheumatic pain or stiffness of affected muscles;
That the Lexoid treatment is a beneficial treatment for rheumatism, whether due to subacute pains or otherwise, or for stiffness of muscles;

- That the Lexoid treatment reaches the real cause and the very nature of the disease or adapts itself quickly to the task;
- That it strengthens and heals the delicate membrane and tissues that have become raw and inflamed;
- That it clears the urine and puts the kidneys in a proper condition to perform;
- That it will remove the cause of kidney or bladder or rheumatic trouble;
- That it helps women to regain vigor, strength, and relief from weak backs, making their household duties turn into pleasant work;
- That Lexoid has helped the worst cases of kidney, bladder trouble, and rheumatism that it would be possible to imagine, including persons who had given up all hope or ever being cured and that it should do the same for the prospect;
- That Lexoid found easy prey of that which baffled physicians for years;
- That the use of Lexoid will prevent the necessity of an operation;
- That Lexoid made persons well who had been pronounced incurable and had given up hope of ever being helped;
- That Lexoid is a competent treatment for puffing and swelling under the eyes, cases where one's water is light or pale or dark colored or cloudy, or contains sediment or brick dust when it stands;
- That Lexoid is the most reliable treatment on earth for such troubles or in fact that it is a true remedy or that it is far superior to other remedies or in fact a true remedy;
- That Lexoid helps thousands to regain their health, who are afflicted with lame backs or are stiff and bent with rheumatism, or that it will do the same for the prospect;
- That said Lexoid rheumatic balm gives quick relief to any or all kinds of aches and pains;
- That Lexoid is a scientific treatment found beneficial as embodying the necessary principles to expel the poisonous impurities from the system, and relieve the conditions that exist;
- That it is practically impossible for one suffering with such diseases to use Lexoid without being benefited;
- That 80 per cent of users, report improvement after trial treatment;

- That said Lexoid rheumatic balm or any of the other Lexoid treatments is an adequate or effective remedy for either muscular or subacute rheumatism or for stiffness of joints in muscles;
- (c) That kidney diseases are treacherous and steal upon the unsuspecting victims, stealthily, insidiously, giving little warning, until by their subtle poison they have driven strong men to hopelessness and despair;
- That the kidneys are generally and directly responsible for backache;
- That the following are definite kidney symptoms: Pain in small of back, puffiness under eyes, specks before eyes, dragging feeling, dizziness, headache, cramps, stiff joints, aching muscles;
- That the presence of impurities in the uric acid necessarily cause terrible, distressing, and obstinate disease;
- That uric acid impurities are the real cause of rheumatism, kidney, and bladder trouble;
- That there is but one certain method of strengthening and nourishing the kidneys and that Lexoid meets such condition;
- That Lexoid treatment works so quickly in supplying health and nourishment to the kidneys that it makes it no longer necessary for people to suffer from such obstinate diseases;
- That dizziness is the sign of impaired kidney action, which in turn is often mistaken for heart trouble;
- That heart disturbance results from faulty kidney excretion even though physicians do not always lay the cause of heart trouble to the kidneys;
- That definite symptoms of kidney disease are soreness of the hips and joints, weakness of the stomach, coated tongue, swelling of the ankles, weakness of the heart action, poor circulation, sleeplessness, nervousness, irritability, dyspepsia, foul-tasting mouth, headache, biliousness, smothering sensations;
- (d) That any of the following: Thirst, hot and dry skin, shortness of breath, headaches, nervousness, chilly sensations, evil forebodings, restlessness and uneasy feeling, troubled sleep, puffiness of the eyelids, swelling of the feet and ankles, loss of flesh or vomiting—are in themselves to be regarded as the recognized symptoms of Bright's disease;
- That inferentially or otherwise said remedy will relieve or cure Bright's disease;

- (e) That derangement of the prostatic gland of itself is the common cause of sexual weaknesses, urinary irritation, inflammation of the bladder, secondary disease of the kidneys, or other urinary evils;
 That said treatment inferentially or otherwise is a competent remedy for the prostatic inflammation;
 That it keeps the bladder and urinary tract antiseptically clean and disinfected or causes inflammation of the prostatic gland to subside;
- (f) That the following are definite bladder symptoms: Distressed feeling, floating specks before eyes, dark circles under eyes, cramps, dizziness;
- (g) That changes in the composition of said treatment are made to fit the conditions of any particular case, until and unless such be in fact the case;
- (h) That the price charged for the treatment is a special price unless the price stated is lower than the price regularly charged for such treatment;
- (i) That a time limit has been fixed for accepting the offer as to price and terms unless such acceptances are refused if received after expiration of such time limit;

and all representations and statements equivalent or similar thereto in form or substance;

- (j) Respondents further acknowledge that they are in law primarily responsible for any and all statements and representations contained in any testimonial published or caused to be published in their advertisements, booklets, folders, circulars, letters, or other advertising literature; and that the same are considered in law and by the Federal Trade Commission to be direct statements and representations of respondent;

Respondents further stipulate and agree that they will forever cease and desist from disclosing the contents of any letters received by them from customers or so-called "patients."

It is also stipulated and agreed that if the said The Lexoid Co. and/or H. Michel DeWerth should ever resume or indulge in any practice violative of the provisions of this agreement, this said stipulation as to the facts may be used in evidence against it, him, or them in the trial of the complaint which the commission may issue. (October 14, 1931.)

0161. Publisher—Puzzle-Problem Prizes.—The publisher of a periodical using the puzzle-problem-prize form of advertising to secure

subscribers has entered into a stipulation with the Federal Trade Commission in which it is admitted that—

(a) No prize or award is given or awarded for the mere solution of the problem or puzzle portrayed; and

(b) To secure any of the prizes offered, the winner must enter a contest the nature of which is not disclosed in the advertisement and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in the advertisement.

And this publisher agrees to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form, and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise and either directly or inferentially—

(a) That the mere solution of any puzzle will enable a contestant to win the prize;

(b) That any prizes offered are free;

(c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;

(d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

And further agrees not to publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement, unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (October 14, 1931.)

0162. Magazine-Subscription Agency—Puzzle Problem Prizes.—Individuals operating a periodical-subscription agency and using the puzzle-problem-prize form of advertising to secure subscribers, agents, and solicitors, have entered into a stipulation with the Federal Trade Commission wherein they admit this form of advertising is used for the purpose of securing a mailing list and inducing persons to enter the contest, and also admit that—

(a) No prize or award is given or awarded for the mere solution of the problem or puzzle portrayed; and

(b) To secure any of the prizes offered, the winner must enter a contest the nature of which is not disclosed in the advertisement and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in the advertisement;

And agree to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form, and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise and either directly or inferentially—

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free;
- (c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle;

And further agree not to publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement, unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (October 14, 1931.)

0163. Vendor-Advertiser—Rheumatism and Neuritis.—H. & J. Laboratories, Parkersburg, W. Va., the vendor of orange brand tonic and golden nuggets, represented to be a competent treatment for rheumatism, neuritis, and kindred ills, has entered into a stipulation with the Federal Trade Commission wherein the said vendor admits that statements made concerning the therapeutic value of such medicines are exaggerated and misleading, and that orange brand tonic is merely a bitter tonic and is not an adequate treatment for rheumatism or neuritis, and that the ingredients thereof, singly or in combination in any proportion, would not constitute an adequate treatment for rheumatism or neuritis, nor would they stimulate the liver, purify the blood, free the consumer from aches and pains, or insure him better health; and they also admit that golden nuggets are merely laxative tablets.

Said vendors agree to cease and desist from publishing and circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulate and agree in soliciting the sale of and selling their said products in interstate commerce to cease and desist from describing, labeling, and branding or otherwise designating their said products as a proper, adequate, or effective treatment for rheumatism, neuritis, or kindred ailments, and from

representing directly or indirectly by way of direct statement or published testimonial in advertisements or otherwise—

That orange brand tonic and/or golden nuggets, offered for sale under these or any other trade names, if composed of the same or similar ingredients in whole or substantial part, are a proper, adequate, or effective treatment for rheumatism, neuritis, blood disorders, or kindred ailments, or that they, either or both, will stimulate the liver, purify the blood, or free the consumer from aches and pains, or insure him of better health;

and all representations and statements equivalent or similar thereto in form or substance. (October 14, 1931.)

0164. Vendor-Advertiser—Blood and Skin Diseases.—Edwin B. Meeks, trading as Panter Remedy Co., advertising as Doctor Panter, the vendor-advertiser of a medicine represented to be a competent treatment for blood and skin diseases has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) That said medicine is sold and distributed by Doctor Panter (now deceased);
- (b) That the treatment has been used successfully for over 25 years in the most severe and chronic cases;
- (c) That respondent's remedies purify the blood;
- (d) That respondent's treatment is a "specific";
- (e) That either impliedly or otherwise, respondent's treatment will cure social diseases or psoriasis pellagra or the many skin diseases, or will affect the blood pressure of the patient regardless of what may cause such high-blood pressure;
- (f) That the diseased conditions present will be relieved and brought to a normal condition by the use of respondent's remedies, or that the patient will be more than aided and relieved thereby;
- (g) That respondent's medicine will cure any ailment;

and all representations and statements equivalent or similar thereto in form or substance. (October 14, 1931.)

0165. Newspaper Publisher—Pile Treatment.—The publisher of a large eastern daily newspaper, printing and circulating in his periodical the advertisements of the vendor of a pile treatment alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a

joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such stipulation of which he has notice. (October 14, 1931.)

0166. Magazine Publisher—Massage Cream.—The publisher of a magazine printing and circulating in his periodical the advertisements of the vendor of a massage cream alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser, the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (October 14, 1931.)

0167. Magazine Publisher—Massage Cream.—The publisher of a magazine printing and circulating in his periodical the advertisements of the vendor of a massage cream alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (October 14, 1931.)

0168. **Vendor-Advertiser—Bladder and Urinary Tract Treatment.**—Harry D. Powers, trading as Palmo Co., Battle Creek, Mich., the vendor-advertiser of Palmo Globules has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) That said medicinal preparation is a competent treatment for bladder trouble, lack of control of urine, pains in the back, general debility, prostate trouble, cystitis, and other ailments of the urinary tract;
- (b) That said medicinal preparation is effective in causing the user to sleep all night, unless such statements are qualified to indicate that it is effective only in cases due to bladder and urinary irritation;
- (c) That said medicinal preparation will produce a soothing or healing action that will convince the most skeptical sufferer;
- (d) That any definite proportion of men are afflicted with prostatic trouble, unless respondent has authentic information to support the statement;

and all representations and statements equivalent or similar thereto in form or substance. (October 19, 1931.)

0169. **Periodical Publisher—Puzzle-Problem-Prize Advertising.**—The publisher of a periodical using the puzzle-problem-prize form of advertising to secure subscribers has entered into a stipulation with the Federal Trade Commission in which it is admitted that—

- (a) No prize or award is given or awarded for the mere solution of the problem or puzzle portrayed; and
- (b) To secure any of the prizes offered, the winner must enter a contest the nature of which is not disclosed in the advertisement and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in the advertisement.

And this publisher agrees to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form, and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise and either directly or inferentially—

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free;

- (c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

And further agrees not to publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement, unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (October 19, 1931.)

0170. Periodical Publisher—Puzzle-Problem-Prize Advertising.—The publisher of a periodical using the puzzle-problem-prize form of advertising to secure subscribers has entered into a stipulation with the Federal Trade Commission in which it is admitted that—

- (a) No prizes or awards are given or awarded for the mere solution of the problem or puzzle portrayed; and
- (b) To secure any of the prizes offered, the winner must enter a contest the nature of which is not disclosed in the advertisement and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in the advertisement.

And this publisher agrees in soliciting the services of local agents for the purpose of procuring subscriptions to its magazine and newspapers served by it to cease and desist from publishing and circulating, or causing to be published and circulated, for its own account or in its own behalf, any statement which is false or misleading in substance or form, and specifically to cease and desist from representing in advertisements or otherwise, and either directly or inferentially—

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free without indicating in the same advertisement that the prizes depend upon some condition;
- (c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

This publisher also agrees that it will not publish for its own account or in its own behalf any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement unless there appears also in such advertisement adjacent to and equally conspicuous with said offer of a prize or reward a clear statement to the effect that something more of a substantial nature will be required in addition to the solution of the puzzle or problem before the prize or reward can be won. (October 19, 1931.)

0171. **Periodical Publisher—Puzzle-Problem-Prize Advertising.**—The publisher of a periodical using the puzzle-problem-prize form of advertising to secure subscribers has entered into a stipulation with the Federal Trade Commission in which it is admitted that—

- (a) No prizes or awards are given or awarded for the mere solution of the problem or puzzle portrayed; and
- (b) To secure any of the prizes offered, the winner must enter a contest the nature of which is not disclosed in the advertisement and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in the advertisement.

And this publisher agrees in soliciting the services of local agents for the purpose of procuring subscriptions to its magazine and newspapers served by it to cease and desist from publishing and circulating, or causing to be published and circulated, for its own account or in its own behalf, any statement which is false or misleading in substance or form, and specifically to cease and desist from representing in advertisements or otherwise, and either directly or inferentially—

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free, without indicating in the same advertisement that the prizes depend upon some condition;
- (c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

This publisher also agrees that it will not publish for its own account or in its own behalf any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement unless there appears also in such advertisement adjacent to and equally conspicuous with said offer of a prize or reward a clear statement to the effect that something more

of a substantial nature will be required in addition to the solution of the puzzle or problem before the prize or reward can be won. (October 19, 1931.)

0172. **Periodical Publisher—Puzzle - Problem - Prize Advertising.**—The publisher of a periodical using the puzzle-problem-prize form of advertising to secure subscribers has entered into a stipulation with the Federal Trade Commission in which it is admitted that—

- (a) No prize or award is given or awarded for the mere solution of the problem or puzzle portrayed; and
- (b) To secure any of the prizes offered the winner must enter a contest the nature of which is not disclosed in the advertisement and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in the advertisement.

And this publisher agrees to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form, and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise and either directly or inferentially—

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free;
- (c) That any prize, benefit or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

And further agrees not to publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement, unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (November 1, 1931.)

0173. **Newspaper Publisher—Blood Diseases—Piles—Epilepsy—Gallstones—Lost Manhood.**—The publisher of a newspaper of national circulation printing and circulating in his periodical the advertisements of the vendor of a medical treatment for blood diseases; a pile cure; a medicine for epileptic fits; another for gallstones; and a prescription to restore lost manhood alleged to be false and misleading has stipulated with the Federal Trade Commission that if the

commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (November 2, 1931.)

0174. **Magazine Publisher—Massage Cream.**—The publisher of several magazines of large circulation printing and circulating in his periodical the advertisements of the vendor of a massage cream alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (November 2, 1931.)

0175. **Magazine Publisher—Massage Cream.**—The publisher of several magazines printing and circulating in his periodical the advertisements of the vendor of a massage cream alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees—

(1) To waive any right he may have to be made a joint respondent with the advertiser;

(2) To waive any right he may have to assert and defend any right he may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which he has notice. (November 2, 1931.)

0176. **Radio Broadcaster—Electromagnetic Coil.**—A corporation operating a large broadcasting station permitting the vendor of an electromagnetic coil or appliance to make claims, statements, and representations concerning such appliance that are alleged to be false and misleading has stipulated with the Federal Trade Commission that if the commission will refrain from making this broadcasting station a joint respondent with the vendor-advertiser in the proceedings against him, the broadcasting station agrees—

(1) To waive any right it may have to be made a joint respondent with the advertiser;

(2) To waive any right it may have to assert and defend any right it may have in the subject matter;

(3) To be bound by, submit to, obey, and abide by any cease and desist order that may be issued against the vendor-advertiser; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the broadcasting station will observe and abide by the terms and provisions of such a stipulation of which it has notice. (November 2, 1931.)

0177. **Vendor-Advertiser—Skin Peel.**—Marvo (Inc.), New York, N. Y.,¹ the vendor-advertiser of a skin peel to remove superficial blemishes, has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

(a) That by the use of said product "marvo liquid skin peel" one may have either a new skin or a smooth, clear, beautiful, or youthlike complexion in three days' time or in any other length of time, unless qualified to limit change to removal of surface blemishes;

(b) That any such skin blemishes as pimples, blackheads, large pores, or signs of approaching age may be peeled off the face or otherwise eliminated by the use of said product, unless qualified by limiting the representations to blemishes, etc., peculiar to the outer layer of the skin;

(c) That said treatment will give everyone using same a new youthlike or clear skin on the face or neck or hands or arms or body;

¹ William Witol also joining in the stipulation.

- (d) That said treatment will remove ugly blemishes, unless such statements are qualified to indicate that the action of the treatment is limited to blemishes peculiar to the outer layer of the skin;
- (e) That foreign beauty doctors have charged enormous prices for this same treatment;
- (f) That one bottle of Witol's marvo liquid skin peel, or any other quantity, will in three days' time give one a flawless, new skin, either flushed with natural color or satin-smooth;
- (g) That marvo restores natural beauty to jaded cosmetic-tired skins;
- (h) That marvo will remove or in anywise affect the wrinkles of age or crow's feet about the eyes, or that it shrinks up large pores, making it impossible for dirt to collect in them or that it lessens perspiration, unless such statements are qualified to indicate that the defects which may be removed or otherwise affected are only those defects which are visible in the outer layer of the skin;
- (i) That one bottle of marvo or any other quantity thereof will peel off and do away with the disfiguring effects of acne unless such statements are qualified to indicate that the disfiguring effects of acne apply only to such visible defects as appear in the outer layer of the skin;
- (j) That the new skin exposed by such peeling will not be injured by weather or temperature conditions unless accompanied by an explanation that the new skin so exposed will not any more so be injured than would the old, removed skin, under similar conditions;
- (k) That testimonials published are absolute proof or positive undeniable evidence of the claims made for marvo;
- (l) That the price charged for the treatment is a special price unless the amount so stated is lower than the price usually paid for such treatment;

and all representations and statements equivalent or similar thereto in form or substance. (November 2, 1931.)

0178. Vendor-Advertiser—Correspondence Exchange or Matrimonial Agency.—Shuford M. Futch, trading as Eva Moore, Jacksonville, Fla., the vendor-advertiser of lists of names and descriptions of persons seeking correspondence with other persons, commonly called a correspondence exchange or matrimonial agency, has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist

from making any representations that are false or misleading and specifically from representing that—

- (a) Any pamphlet or booklet is sent free unless such document is sent to persons requesting it without requiring the payment of any money or the rendering of any service and without imposing any conditions on such persons;
- (b) That respondent can procure a sweetheart for a prospective subscriber;
- (c) That respondent is a woman;

and all representations and statements equivalent or similar thereto in form or substance.

And he further agrees to cease and desist from using the name Eva Moore as a trade name or any trade name that will import or imply that respondent is a woman. (November 2, 1931.)

0179. **Vendor-Advertiser—Hair Dye.**—Beautifactors (Inc.), New York, N. Y., the vendor-advertiser of a hair dye has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that the use of “said hair-coloring preparations” are harmless; undetectable; or will banish gray hair; restore the color, or that it is a French discovery.

It also agrees to quit labelling, branding, or otherwise designating the preparation as “restoria,” and all representations equivalent or similar thereto in form or substance. (November 2, 1931.)

0180. **Vendor-Advertiser—Stomach Ulcers.**—The vendor-advertiser of medicated tablets for use as a treatment of stomach ulcers, gastritis, indigestion, and kindred ailments due to hyperacidity has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that—

- (a) The said treatment is efficacious or beneficial in any form of stomach trouble whatsoever unless such ailment is the result of hyperacidity or faulty diet;
- (b) That no diet is involved in the treatment offered;
- (c) That said treatment will rid the patient of pain and vomiting and other discomforts or that the relief given is immediate;
- (d) That the trial offer is one of “no pay” until and in fact a no-pay trial offer is submitted;

- (e) That any reward or guaranty as to testimonials refers to the truth of the statements therein contained, unless and in fact all such statements are duly verified by respondents;

and all representations and statements equivalent or similar thereto in form or substance.

They also agree to quit using the word "laboratories" as part of a trade name until they actually maintain a laboratory. (November 2, 1931.)

0181. Vendor-Advertiser—Gallstones.—Frank Granzow, trading as Doctor Hildebrand Laboratories, Chicago, Ill., the vendor-advertiser of a treatment for gallstones has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly or indirectly as purporting to be upon the responsibility of another, which is false or misleading and specifically stipulates and agrees * * * to cease and desist from representing in advertisements or otherwise—

- (a) That respondent's medicine will rid the system of the ailments specified;
- (b) That gallstones are dangerous and cause burning pains around the liver, pains in the sides, and chills, fever, colic, indigestion or gastritis, unless properly qualified to show that they do not always do so;
- (c) That the use of respondent's capsules will avoid an operation;
- (d) That respondent's medicine will cure any ailment or disease;
- (e) That scientists have stated that millions die directly or indirectly from gallstones, liver and stomach troubles, or that millions do so die; or that gallstones are killing millions;
- (f) That impliedly or otherwise respondent's medicine will cure in all cases;
- (g) That respondent's medicine will cure liver complaints or stomach complaints or ailments of these organs;
- (h) That absolute freedom from the ailments named may be had through the use of respondent's medicine;

- (i) That impliedly or otherwise respondent's medicine is an efficient treatment for any of the following ailments (which may be caused by various conditions in no way connected with the gall bladder), to-wit: pain in the stomach, gas pains, indigestion, dyspepsia, sour stomach, heartburn, sick headaches, dizzy spells, bilious colic spells, jaundice, sallow skin, depressed feeling, hard, offensive, whitish or clay-colored stools, dark brown or red urine, pains around the waistline, below the ribs, under the shoulder blades or in the right side, backache, nervousness or constipation;
- (j) That the use of respondent's medicine will overcome all the agony of passing gallstones;
- (k) That respondent's medicine will bring complete recovery;
- (l) That neglect to buy respondent's medicine may mean operations, hospital bills, and what not;
- (m) That respondent will pay \$1 or \$3 or any other amount of money for names sent him;
- (n) That the so-called checks for \$1.50, \$2, and \$7 are "checks," or that such alleged credit certificates are presents, gifts, or gratuities;
- (o) That respondent by his alleged reductions in price is "standing" or "sharing" any part of the cost of such treatment;
- (p) That respondent has "gone out of his way" to make an exceptional offer, or that any such offers are exceptional;
- (q) That respondent "can not afford to make everybody such offers," or that same are confidential and exceptional to said prospect; or that he "can not hold it open" unless such be in fact the case;
- (r) That there is a time limit of 10 days or any other period for acceptance of respondent's various offers unless such acceptance by a prospect is refused by respondent after such limitation of time;
- (s) That said so-called coupon book is "worth \$19.50" or any other sum; or that it is a present; or that by implication it reduces the price of said treatment; or that it is limited to the use of old customers unless shipments are in fact refused to others using the coupons;
- (t) That any of the prices quoted are "special" low prices unless the same are in fact less than the regular price for repeat orders, or are less than the prices offered generally at corresponding stages of negotiation;
- (u) That said treatment consisting of a box of 100 capsules is a "complete" treatment;

- (v) That the purchaser should have known better than to believe respondent's representations that the first treatment would constitute a "complete" remedy;
- (w) That the purchaser should continue to buy such treatment, and use it daily, after he is "well";
- (x) That published testimonial letters from users were "unsolicited" unless the same were in fact received without solicitation by respondent;

and all representations and statements equivalent or similar thereto in form or substance. (November 2, 1931.)

0182. Vendor-Advertiser—Catarrh—Colds.—Aeriform Co., formerly Aeriform Laboratories, Cincinnati, Ohio, the vendor-advertiser of an inhaler and medicated tablets, etc., for use in treating catarrh, colds, and similar ailments has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that—

- (a) 1,000 people are killed weekly by lung and bronchial trouble;
- (b) That said aeriform medicated vapor treatment will stop weak lung and/or bronchial troubles, or catarrh of the nose or throat;
- (c) That the aeriform medication tablets are a competent remedy for weak lungs, or that they constitute a lung tonic;
- (d) That the healing ingredient of said aeriform vapor treatment brings permanent relief for such conditions;
- (e) That the Doctor Beatty blood tonic is in fact a tonic for the blood or that it purifies the blood;
- (f) That a month's treatment of the Doctor Beatty blood tonic is sent free to the purchaser inasmuch as the consideration therefor has been included in the payments made for the inspirator and medication tablets;
- (g) That the so-called aeriform treatment acts either directly on the seat of the disease, or indirectly as a blood tonic;
- (h) That the aeriform inhalation keeps the lungs clear of germ laden mucous and prevents infection from spreading to healthy parts of the lungs;
- (i) That said aeriform treatment will stop all colds quickly, or will remove inflammation, penetrate the ear tubes and relieve deafness, or that most deafness is caused by neglected catarrh;

- (j) That the aeriform inhalation strengthens the lungs or clears up chronic bronchitis or asthma;
- (k) That for a few cents one may have with the aeriform a home treatment equivalent to that given by a nose and throat specialist in his office for a charge of from \$2 up;

and all representations and statements equivalent or similar thereto in form or substance, and also agrees to quit signing correspondence as corporate officers until incorporated in fact and to quit labeling, branding, or otherwise designating such products as a treatment for weak lungs, and a lung or blood tonic. (November 2, 1931.)

0183. Vendor-Advertiser—High Blood Pressure.—L. E. Bowen, trading as Artery-Lax Co., Chicago, Ill., the vendor-advertiser of an alleged treatment for high blood pressure called "Artery-lax" admits that he has represented in published advertisements—

"High blood pressure quickly relieved. Artery-lax \$1 by mail. Triple size \$2."

and has stipulated with the Federal Trade Commission that without admitting or denying the charges that his representations are false and misleading he has definitely discontinued advertising his preparation and does not intend to resume. (November 2, 1931.)

0184. Vendor-Advertiser—Hair Dye.—Yvonne Bebeau, New York, N. Y., the vendor-advertiser of a hair dye has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing that—

Such dye is a "color restorer"; or

- (a) That "gray hair gone for good" by using her hair coloring compound;
- (b) That it will change the color to the youthful color of the hair of the user;
- (c) That it will impart the color or shade desired by the user in 15 minutes or any other limited time;
- (d) That a French scientist perfected the compound, dye, or method used by respondent;
- (e) That one treatment or any number of treatments will change the color of the hair to the natural youthful color of the user;
- (f) That it won't fade, rub, or wash off;
- (g) That it is a new method;
- (h) That it recolors the inside of the hair shaft;
- (i) That the hair never gets gray again;
- (j) That it will stop gray hair;
- (k) That said dye is anything but a chemical hair dye;

- (l) That respondent has an office or place of business in Paris, London, or any other place outside of New York unless and until such be the fact;

and all representations and statements equivalent or similar thereto in form or substance. (November 2, 1931.)

0185. **Vendor-Advertiser.**—Curette Laboratories, New York, N. Y., this vendor-advertiser, a corporation, agreed to discontinue advertising and offering its product for sale. (November 2, 1931.)

0186. **Vendor-Advertiser—Vaginal Suppositories.**—Max Elman, trading as Germico Pharmaco, New York, N. Y., this vendor-advertiser of "germico hygienic powder" and "germico vaginal suppositories or cones" has stipulated with the Federal Trade Commission to discontinue advertising and selling said powder and cones under that or any other trade name. (November 2, 1931.)

0187. **Magazine Publisher—Prize Contests.**—The publisher admits that as a means of procuring the services of local agents to solicit subscriptions to its said magazines, it has conducted various contests in which prizes were offered to the winners in accordance with certain rules established by respondent, and that for the purpose of securing a mailing list and inducing persons to enter the contest, and thereby increase the circulation of its publications, it caused a certain contest advertisement to be published, when in truth and in fact said statements are incorrect and misleading in that the contestants in order to win such automobiles and other prizes must render a large amount of personal work and services in procuring subscriptions to said magazines and collecting and remitting the payments thereof. The said statement and representation that said automobiles and other prizes are given away or may be had free has the capacity and tendency to mislead the public into answering said contact advertisement in the erroneous belief that the said statements and representations are true and that no substantial consideration will be required in either money or services, in order to win such awards.

This publisher has agreed by stipulation with the Federal Trade Commission that in soliciting the service of local agents for the purpose of procuring subscriptions to its said magazines, to cease and desist from publishing and circulating, or causing to be published or circulated any statement which is false or misleading in substance or form and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially—

That the prizes or inducements offered in such advertised contests are to be had free or that they are given away, unless and until such awards are made without the necessity of either the payment of money or the rendering of personal service by the contestants. (November 2, 1931.)

0188. **Magazine Publisher—Prize Contests.**—The publisher of a magazine of wide circulation admits that as a means of procuring the services of local agents to solicit subscriptions to its magazine it has conducted various contests in which prizes were offered to the winners in accordance with certain rules established by respondent, and that for the purpose of securing a mailing list and inducing persons to enter the contest, and thereby increase the circulation of its publication, it caused a certain contest advertisement to be published, when in truth and in fact said statements in said contest advertisement are incorrect and misleading in that the contestants, in order to win, must render a large amount of personal work and services in procuring subscriptions to said magazine and collecting and remitting the payments thereof, and that such statements and representations have the capacity and tendency to mislead the public into answering said contact advertisement in the erroneous belief that the said statements and representations are true and that no consideration will be required in either money or services, in order to win such award.

This publisher agrees in a stipulation with the Federal Trade Commission that in soliciting the services of local agents for the purpose of procuring subscriptions to its said magazine, to cease and desist from publishing and circulating, or causing to be published and circulated any statement which is false or misleading in substance or form and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially—

That the prizes or inducements offered in such advertised contest are to be had either—

- (a) Free; or
- (b) Absolutely free of all cost; or
- (c) Free of all cost;

unless and until such awards are made without the necessity of either the payment of money or the rendering of personal service by the contestants. (November 2, 1931.)

0189. **Vendor-Advertisers—Eczema.**—Floyd R. Perkins, and Mrs. E. M. Boyer, trading as American Vienna Co., Battle Creek, Mich., the vendor-advertisers of a treatment for eczema has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) That said treatment ends eczema or the agony and torture of eczema;

- (b) That it will rid one of eczema torture;
- (c) That with respondents' help one can be entirely rid of eczema troubles;
- (d) That a quick start with this treatment means a quick end to one's eczema miseries;
- (e) That said treatment will bring permanent relief regardless of how long one has suffered with eczema or if other methods have failed, or at all;
- (f) That said treatment masters the eczema even in the most virulent form, or at all;
- (g) That even the most stubborn cases of eczema yield quickly to this treatment;
- (h) That the source of eczema trouble is reached by said treatment;
- (i) That through its use permanent results can be assured to any sufferer;
- (j) That said treatment will bring more than soothing relief to the sufferer from eczema;
- (k) That by its use the eczema condition is entirely wiped out—no more to return;
- (l) That a free trial of the treatment is offered so long as payment of the full price is required in advance, on a money-back guarantee;
- (m) That said treatment can be depended upon to calm the agony of eczema into complete forgetfulness;
- (n) That one can be quickly free from the effects of eczema by the use of this treatment;
- (o) That eczema can be mastered right at home with this effective treatment, or that said treatment is effective in mastering eczema;
- (p) That said treatment is unfailing in positively and quickly mastering the various forms of eczema;
- (q) That this is an effective treatment for eczema; unless limited to the itching and burning;
- (r) That regular and persistent use of said treatment will cause all traces of eczema to disappear completely;
- (s) That it goes right to the root of this malignant skin trouble regardless of how deep seated the condition may be;
- (t) That it masters the catarrhal or any other condition of eczema;
- (u) That any reduced price is "special" to the prospect so long as the same is offered to all other prospects at a corresponding stage of the negotiations;
- (v) That a time limit is placed upon any special offer unless acceptance of such offer by the prospect is refused by the respondents after the time so designated;

and all representations and statements equivalent or similar thereto in form or substance.

These vendor-advertisers also agree to discontinue the use of "Vienna" as part of their trade name within six months. (November 9, 1931.)

0190. **Vendor-Advertiser—Pep Tablets.**—Carroll V. Gianitrapany, trading as Modern Sales Co., and LaFrance Laboratories Co., New York, N. Y., the vendor-advertiser of French toniquettes alleged to be a pep tablet admits in a stipulation with the Federal Trade Commission making false and misleading representations to sell the tablets and represents that he has discontinued advertising "said medicinal preparations" and agrees that he "will not hereafter publish any advertisement for the purpose of promoting the sale of said medicinal preparations or any similar medicinal preparation, under the names of 'French vigor tabs,' 'French toniquettes,' or under any other name."

He also agrees that he will not resume the sale of the same in interstate commerce. (November 9, 1931.)

0191. **Vendor-Advertiser—Skin Cream.**—The Frederick H. Young Co., Toledo, Ohio, the vendor-advertiser of Young's Victoria Cream for the skin has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading, and specifically from representing that—

- (a) Respondent's product will correct all skin troubles;
- (b) That it will in a short time take away all blemishes and discolorations;
- (c) That a present will be sent the prospect free of charge, the consideration therefor being included in the charge for the treatment offered, unless the conditions are disclosed in equally conspicuous form and terms in direct connection therewith;
- (d) That the use of respondent's product corrects and prevents freckles, pimples, brown spots, and dark, old-looking skin regardless of the cause, unless qualified to indicate it is not effective in all cases;

and all representations and statements equivalent or similar thereto in form or substance. (November 9, 1931.)

0192. **Vendor-Advertiser—Correspondence Courses.**—Ray Rennison, trading as Rayson Institute, Denver, Colo., Ray Rennison, of Denver, Colo., operating under the trade name of Rayson Institute, advertised and offered for sale correspondence courses to train men for civil-service positions as post-office clerks, rural carriers, railway mail clerks, forest rangers, and other Government positions.

In advertisements and advertising literature he made representations as to the openings for such positions, probable earnings, attractive features, etc., that were exaggerated and misleading and resulted in deceiving students who purchased such courses of instruction.

Mr. Rayson has entered into a stipulation with the Federal Trade Commission in which he agrees to discontinue entirely the course of instructions for forest ranger; discontinue advertising under the classification of "help wanted"; and to quit representing his business as an "institute."

He also agrees to cease and desist making or publishing any representations that are false and misleading, and specifically stipulates and agrees—

- (a) That the general clerical examination includes the departmental service, and/or that an examination for departmental clerk will be held;
- (b) That the position of railway mail clerk is an easy position enabling the clerk to travel extensively; work a few days and lay off a few days without working the required number of hours per week, month, or year;
- (c) That a railway mail clerk can choose or elect to work in mail cars or terminals; transfer from one position or job to another at will or at all without request and consent of departments concerned;
- (d) That railway mail clerks receive expense money while on duty unless qualified by stating conditions under which expenses are allowed and paid by the department;
- (e) That railway mail clerks travel in Pullman cars while on duty;
- (f) That any and every one is eligible to take the examinations without stating the necessary qualifications required by the Government as to physical fitness, weight, age, education, and/or experience;
- (g) That civil, service examinations for certain positions are to be held unless such be the fact;
- (h) By direct statement or inference that general civil-service examinations for any position are to be held when the same are limited unless qualified by stating the limitation,
- (i) That a position in the classified civil service has unlimited opportunities for advancement;

and all representations and statements equivalent or similar thereto in form or substance. (November 9, 1931.)

0193. Vendor-Advertiser—Bed Wetting.—The vendor-advertiser of a home treatment, bed-wetting tablets, has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and mis-

leading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) Either directly or inferentially that respondent's treatment is a cure for weak kidneys or for various kidney diseases;
- (b) That it is effective in curing what is commonly called bed wetting, unless such statement be properly qualified to the effect that it alleviates and relieves bladder irritations, which are one of the common causes of bed wetting;

and all representations and statements equivalent or similar thereto in form or substance. (November 23, 1931.)

0194. **Magazine Publisher—Puzzle-Prize Advertising.**—The publisher of a magazine in a stipulation with the Federal Trade Commission admits that as a means of procuring the services of local agents to solicit subscriptions to its said magazine, it has conducted various contests in which prizes were offered to the winners in accordance with certain rules established by respondent, and that for the purpose of securing a mailing list and inducing persons to enter the contest, and thereby increase the circulation of its publication, it has caused certain puzzle-form advertisements to be inserted in various publications; and also admits that no prize or reward was given or awarded for the mere solution of the problem or puzzle portrayed; that to secure any of the prizes offered, the winner must enter a contest, the nature of which is not disclosed in the advertisement, and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in said advertisement; and agrees that in soliciting the services of local agents for the purpose of procuring subscriptions to its said magazine, to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form; and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially—

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free;
- (c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

This publisher further stipulates and agrees that it will not publish any advertisement offering a prize or reward to the winner of a contest

when there is a puzzle or problem portrayed in the same advertisement unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (November 23, 1931.)

0195. Vendor-Advertiser—Puzzle Prize Advertising—Cosmetics and Toilet Preparations.—In a stipulation with the Federal Trade Commission the vendor of cosmetics and toilet preparations admits that as a means of procuring the services of local agents to sell its said "Helen Dawn toiletries," it has conducted contests in which prizes were offered to the winners in accordance with certain rules established by the respondent. Respondent also admits that for the purpose of securing a mailing list and inducing persons to enter the contest and thereby increase the sale of its products, it has caused certain puzzle form advertisements to be inserted in various publications; that said advertisements may be construed as misleading in that, as a matter of fact—

- (a) No prize or reward is given or awarded for the mere solution of the problem or puzzle portrayed;
- (b) To secure any of the prizes offered, the winner must enter a contest, the nature of which is not disclosed in the advertisements, and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in said advertisements.

This vendor agrees that in soliciting the services of local agents for the purpose of selling respondent's cosmetics, to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form; and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially:

- (a) That the mere solution of any puzzle will enable a contestant to win the prize;
- (b) That any prizes offered are free;
- (c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;
- (d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

Respondent further stipulates and agrees that it will not publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement

unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (November 23, 1931.)

0196. Vendor-Advertiser—Hair Dye.—Monroe Chemical Co., trading as Mary T. Goldman, St. Paul, Minn., the vendor-advertiser of a hair dye has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor will cease and desist from making any representations that are false or misleading and specifically from representing—

- (a) That gray hair regains its youthful color overnight by the application of respondent's said treatment, or at all; or that faded streaks are ended;
- (b) That the treatment takes only seven of eight minutes;
- (c) That the color will gradually creep back, or that restoration will be perfect and complete, or that a few cents worth gives complete restoration or any restoration at all;
- (d) That an hour will start the magic change that brings back youthful lustre and color; or that any change whatever made will "bring back" said youthful color;
- (e) That respondent shows women how to "retain" ever-youthful hair; or that women using respondent's hair stain are "as free from gray hair as they can be," or at all;
- (f) That respondent's hair stain either can restore graying, faded, or discolored hair, or brings back the perfect, original color to hair, or restores the hair to the perfect, natural color, or at all;
- (g) That gray hair can be stopped; or that with this treatment the gray disappears and the youthful shade returns;
- (h) That the natural shade of the hair is restored, or that respondent's hair stain is a "scientific hair color restorer" or that it never fails to "restore" when correctly used;
- (i) That Mary T. Goldman, the discoverer of said hair dye, is actively engaged in the conduct of said business;
- (j) That statements and representations are made by Mary T. Goldman unless clearly indicated that said statements and representations were made during the lifetime of said Mary T. Goldman;

and all representations and statements equivalent or similar thereto in form or substance. (November 23, 1931.)

0197. Advertising Agency—Hair Dye.—An advertising agency engaged in preparing and placing for publication the advertising copy

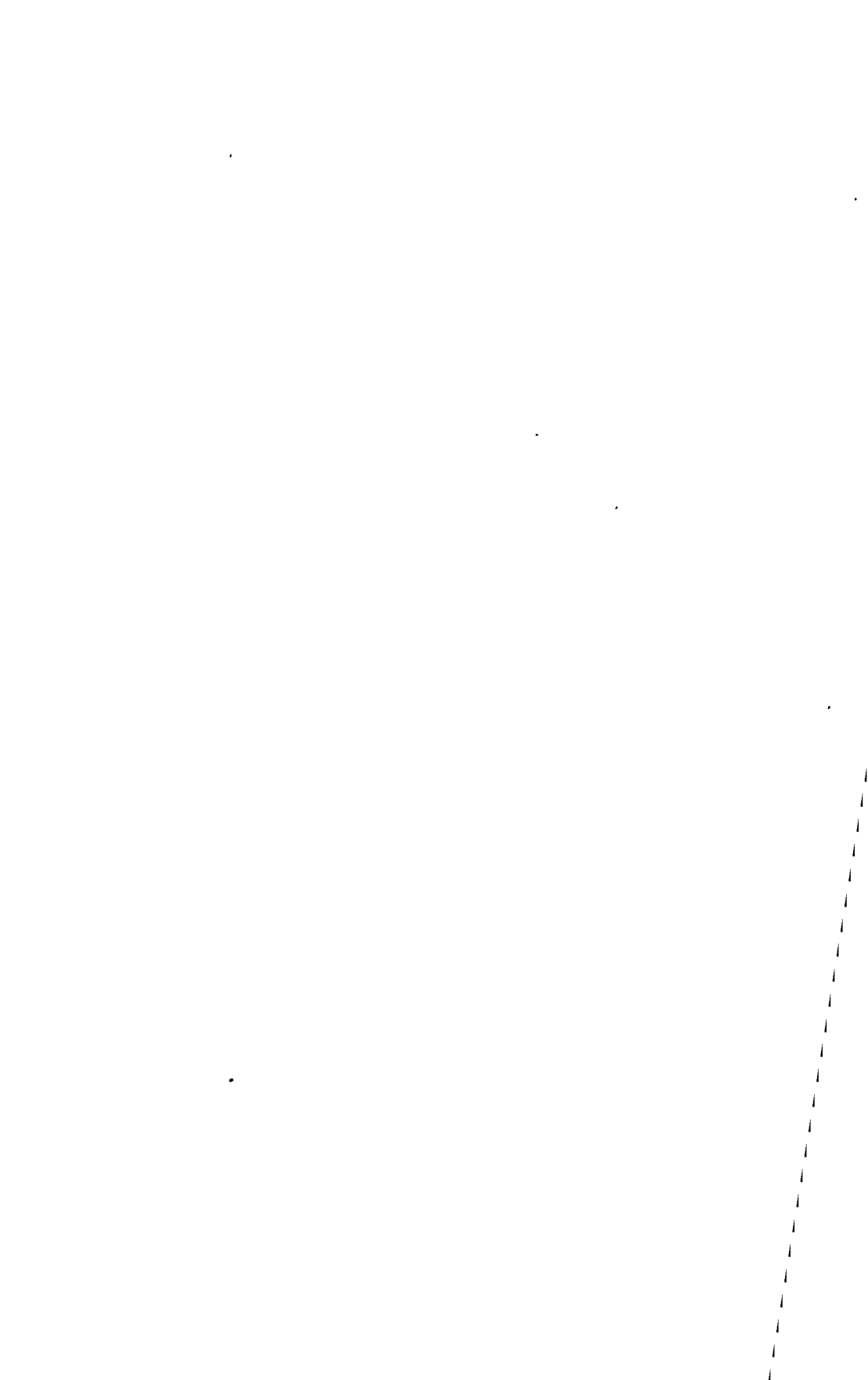
for a manufacturer and vendor of a certain hair dye has agreed in a stipulation approved by the Federal Trade Commission:

(1) To waive any right it may have to be made a joint respondent with the advertiser;

(2) To waive any right it may have to assert and defend any right it may have in the subject matter;

(3) To be bound by, submit to, obey and abide by any cease and desist order that may be issued against the advertiser-vendor; and

(4) If the matter is adjusted by a stipulation between the commission and the advertiser-vendor, the publisher will observe and abide by the terms and provisions of such a stipulation of which it has notice. (November 23, 1931.)



DECISIONS OF THE COURTS'

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

FEDERAL TRADE COMMISSION *v.* NON-PLATE ENGRAVING COMPANY, INC.*

(Circuit Court of Appeals, Second Circuit. May 4, 1931)

No. 253

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Where corporation used words "non-plate engraving" in corporate name and advertised product as "non-plate engraved" and "engraved effects", though only printed by special process, Commission's cease and desist order held lawfully granted (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

(The syllabus is taken from 49 F. (2d) 766)

Application by the Commission for the enforcement of an order issued by it under section 5 of the Federal Trade Commission Act, granted.¹

Appearances: *Mr. Robert E. Healy*, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Richard P. Whiteley*, for the Commission.

Franklin & Hicks, of New York City (*Mr. George Seagrave Franklin*, of New York City, of counsel), for respondent.

Before MANTON, LEARNED HAND, and CHASE, Circuit Judges.

PER CURIAM:

The petitioner below established before the Federal Trade Commission a violation of section 5 of the Federal Trade Commission Act (38 Stat. 717; 15 USCA sec. 45) in the use of the words "non-plate engraving" and advertising its product as "non-plate engraving," "engraved effects," and "non-plate engraved," when its products were not engraved but were printed by a special process. The order entered directed it to "cease and desist from using the word

¹ The period covered is that of this volume, namely, March 24, 1931, to December 23, 1931, inclusive.

There should also be noted, in addition to the cases here reported in full, case of *Artloom Corp. v. National Better Business Bureau, Inc., et al.*, 48 F. (2d) 807, in which the court (D. C., S. D. N. Y.) held plaintiff corporation not entitled to a preliminary injunction restraining the Bureau from announcing to the public that the Commission had ordered plaintiff to desist from use of word "Wilton" in describing a type of rug made by it (14 F. T. C. 383), on the ground that the Commission's order, made after hearing, to determine possible use of an unfair method of competition, was a public record, and that if Congress had intended that existence of such an order should be kept confidential until propriety of order had been tested in court, it would have so provided.

² The case is reported in 49 F. (2d) 760.

³ See 18 F. T. C. 84.

'engraving' or 'engraved' in its corporate name, business signs, or advertising matter used in the offering for sale or sale of stationery in interstate commerce, upon which the words, letters, figures, and designs have not been produced from metal plates, into which such words, letters, and designs have been cut." On this record, the order is amply supported by the evidence and was lawfully granted. (*Sea Island Thread Co., Inc., v. Fed. Trade Comm.*, 22 F. (2d) 1019 (C. C. A. 2); *Fed. Trade Comm. v. Winsted Hosiery Co.*, 258 U. S. 483.)

The petitioner is entitled to and may enter an order of enforcement directing the respondent to comply with the order to cease and desist.

Order granted.

FEDERAL TRADE COMMISSION *v.* RALADAM COMPANY ¹

(Supreme Court. Argued April 24, 1931. Decided May 25, 1931)

No. 484

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

In statutory proceedings to restrain unfair competition, fundamental questions are whether defendant's methods are unfair and whether they tend to substantially injure public by restricting competition in interstate trade. (Federal Trade Commission Act, sec. 5; 15 USCA sec. 45.)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

To warrant statutory proceedings to restrain unfair competition, there must be some substantial competition affected by defendant's trade practices.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

What constitutes unfair methods of competition within statute is question for final [588] determination of court.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Federal Trade Commission must, as prerequisite to complaint under statute, determine whether there is reason to believe that unfair method of competition is being used, that proceeding would be to interest of public, and that such interest is specific and substantial.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Unfair trade methods are not per se unfair methods of competition within statute authorizing restraint.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Within statute authorizing restraint of unfair methods of competition, word "competition" imports existence of present or potential competitors, and "unfair methods" must be such as injuriously affect competitor's business.

OFFICERS. KEY No. 103.

Official powers can not be extended beyond terms of necessary implication of statutory grant.

¹The case is reported in 283 U. S. 643. The case before the Commission is reported in 12 F. T. C. 363.

STATUTES. KEY No. 216.

Fact that there was common agreement in debate as to general purpose of act may be considered in determining what that purpose was.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

In proceedings to restrain unfair methods of competition, it is sufficient to show that substantial competition is substantially injured or threatened with substantial injury.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Federal Trade Commission *held* without jurisdiction in proceedings to restrain unfair competition, where evidence failed to show that misleading advertisements complained of substantially injured business of competitors.

From the evidence it was impossible to say whether as result of defendant's advertisement representing certain remedy as a scientific method for treating obesity, any business was diverted or likely to be diverted from those engaged in like trade, or whether competitors were injured in business, or whether there were any other antiobesity remedies which were sold or offered for sale in competition with defendant's products.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Federal Trade Commission's proceedings to restrain unfair competition must be dismissed, if inquiry shows no substantial competition existed.

(The syllabus is taken from 51 Sup. Ct. Rep. 587)

Proceedings by the Federal Trade Commission against the Raladam Company. An order of the Federal Trade Commission directing defendant to desist from certain trade practices was reversed by the Circuit Court of Appeals (42 F. (2d) 430) and the Federal Trade Commission bringing certiorari. Decree of Circuit Court of Appeals affirmed.

The *Attorney General* and *Mr. John Lord O'Brian*, Assistant Attorney General, for petitioner.

Mr. L. W. McCandless, of Detroit, Mich., for respondent.

Mr. Justice SUTHERLAND delivered the opinion of the court.

Under section 5 of the Federal Trade Commission Act, ch. 311, 38 Stat. 717, 719 (U. S. C., Title 15, sec. 45; 15 USCA sec. 45), the relevant parts of which are copied in the margin,¹ the [589] Com-

¹ That unfair methods of competition in commerce are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * If upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition.

mission issued its complaint charging the respondent with using unfair methods of competition in interstate commerce.

Respondent manufactures a preparation for internal use, denominated an "obesity cure." The complaint charges that this preparation is sold by respondent in and throughout the several States, generally to wholesalers who resell to retailer dealers, and these, in turn, to consumers; that it is offered for sale and sold in competition with other persons who are engaged "in offering for sale, and selling, printed professional advice, books of information and instruction, and other methods and means and certain remedies and appliances for dissolving or otherwise removing excess flesh of the human body"; that respondent advertises in newspapers, etc., circulated generally in the United States, and in printed labels, etc., that the preparation is the result of scientific research, knowledge and accuracy, that it is safe and effective and may be used without discomfort, inconvenience, or danger of harmful results to health. Among the ingredients is "desiccated thyroid," which, it is alleged, can not be prescribed to act with reasonable uniformity on the bodies of all users, or without impairing the health of a substantial portion of them, etc., or with safety, without previous consultation with, and continuing observation and advice of, a competent medical adviser. The complaint further avers that many persons are seeking obesity remedies, and respondent's advertisements are calculated to mislead and deceive the purchasing public into the belief that the preparation is safe, effective, dependable, and without danger of harmful results. By way of conclusion, it is said that "the acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, * * * and constitute unfair methods of competition."

Respondent answered and hearings were had before an examiner. The Commission found against respondent and issued a cease and desist order. The findings in general follow the language of the complaint. There was no finding of prejudice or injury to any competitor, but the conclusion was drawn from the findings of fact that the practice of respondent was to the prejudice of the public and respondent's competitors, and constituted an unfair method of competition.

The court of appeals reviewed the action of the Commission upon respondent's petition, and reversed the order, 42 F. (2d) 430. We brought the case here by certiorari, limiting the briefs and argument to the question of the jurisdiction of the Commission. 282 U. S. 829.

In substance the Commission ordered the respondent to cease and desist from representing that its preparation is a scientific method for treating obesity, is the result of scientific research, or that the formula

is a scientific formula; and from representing its preparation as a remedy for obesity, unless accompanied by the statement that it can not be taken safely except under medical advice and direction. Findings, supported by evidence, warrant the conclusion that the preparation is one which can not be used generally with safety to physical health except under medical direction and advice. If the necessity of protecting the public against dangerously misleading advertisements of a remedy sold in interstate commerce were all that is necessary to give the Commission jurisdiction, the order could not successfully be assailed. But this is not all.

By the plain words of the act, the power of the Commission to take steps looking to the issue of an order to desist depends upon the existence of three distinct prerequisites: (1) That the methods complained of are *unfair*; (2) that they are methods of *competition* in commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the *interest of the public*. We assume the existence of the first and third of these requisities; and pass at once to the consideration of the second.

Section 5 of the Trade Commission Act is supplementary to the Sherman Antitrust Act and the Clayton Act. *Federal Trade Comm. v. Beech-Nut Co.*, 257 U. S. 441, 453. The latter was discussed and passed at the same session of Congress. The Sherman Act deals with contracts, agreements, and combinations which tend to the prejudice of the public by the undue restriction of competition or the undue obstruction of the due course of trade, *United States v. American Tobacco Co.*, 221 U. S. 106, 179; and which tend to "restrict the common liberty to engage therein." *United States v. Patten*, 226 U. S. 525, 541.

The Clayton Act, so far as it deals with the subject, was intended to reach in their incipiency agreements embraced within the sphere of the Sherman Act. *Standard Co. v. Magrane-Houston Co.*, 258 U. S. 346, 355-357. The object [590] of the Trade Commission Act was to stop in their incipiency those methods of competition which fall within the meaning of the word "unfair." "The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain." *Fed. Trade Comm. v. Sinclair Co.*, 261 U. S. 463, 476. All three statutes seek to protect the public from abuses arising in the course of competitive interstate and foreign trade. In a case arising under the Trade Commission Act, the fundamental questions are, whether the methods complained of are "unfair," and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and "the common liberty

to engage therein." The paramount aim of the act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree, and this presupposes the existence of some substantial competition to be affected, since the public is not concerned in the maintenance of competition which itself is without real substance. Compare *Internat. Shoe Co. v. Commission*, 280 U. S. 292, 297-299.

The bill which was the foundation of the act, as it first passed the Senate, declared "unfair competition" to be unlawful. Debate apparently convinced the sponsors of the legislation that these words, which had a well-settled meaning at common law, were too narrow. When the bill came from conference between the two Houses, these words had been eliminated and the words "unfair methods of competition" substituted. Undoubtedly the substituted phrase has a broader meaning but how much broader has not been determined. It belongs to that class of phrases which does not admit of precise definition, but the meaning and application of which must be arrived at by what this court elsewhere has called "the gradual process of judicial inclusion and exclusion." *Davidson v. New Orleans*, 96 U. S. 97, 104. The question is one for the final determination of the courts and not of the Commission. *Federal Trade Comm. v. Gratz*, 253 U. S. 421, 427; *Federal Trade Comm. v. Beech-Nut Co.*, *supra*, page 453 of 257 U. S.

The authority of the Commission to proceed, if that body believes that there has been or is being used any unfair method of competition in commerce, was then qualified in conference by the further requirement, not in the original bill—"and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public." By these additional words, protection to the public interest is made of paramount importance, but, nevertheless, they are not substantive words of jurisdiction, but complementary words of limitation upon the jurisdiction conferred by the language immediately preceding. Thus, the Commission is called upon first to determine, as a necessary prerequisite to the issue of a complaint, whether there is reason to believe that a given person, partnership or corporation has been or is using any unfair method of competition in commerce; and that being determined in the affirmative, the Commission still may not proceed unless it further appear that a proceeding would be to the interest of the public, and that such interest is specific and substantial. *Federal Trade Comm. v. Klesner*, 280 U. S. 19, 28. Unfair trade methods are not *per se* unfair methods of *competition*.

It is obvious that the word "competition" imports the existence of present or potential competitors, and the unfair methods must be such as injuriously affect or tend thus to affect the business of these

competitors—that is to say, the trader whose methods are assailed as unfair must have present or potential rivals in trade whose business will be, or is likely to be, lessened or otherwise injured. It is that condition of affairs which the Commission is given power to correct, and it is against that condition of affairs, and not some other, that the Commission is authorized to protect the public. Official powers can not be extended beyond the terms and necessary implications of the grant. If broader powers be desirable they must be conferred by Congress. They can not be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions.

The foregoing view of the powers of the Commission under the act finds confirmation, if that be needed, in the committee reports and the statements of those in charge of the legislation, as well as in the debate which took place in the Senate, extending over weeks of time and covering hundreds of pages in the Congressional Record. In that debate the necessity of curbing those whose unfair methods threatened to drive their competitors out of business was constantly emphasized. It was urged that the best way to stop monopoly at the threshold was to prevent unfair competition; that the unfair competition sought to be reached was that which must ultimately result in the extinction of rivals and the establishment of monopoly; that by the words “unfair methods” was meant those resorted to for the purpose of destroying competition or of eliminating a competitor or of [591] introducing monopoly—such as tend unfairly to destroy or injure the business of a competitor; that the law was necessary to protect small business against giant competitors; that it was an effort to make competition stronger in its fight against monopoly; that unfair competition was that practice which destroys competition and establishes monopoly. These and similar statements run through the debate from beginning to end. Although protection to the public interest was recognized as the ultimate aim, comparatively little was said about it.

It is true, at least generally, that statements made in debate can not be used as aids to the construction of a statute. But the fact that throughout the consideration of this legislation there was common agreement in the debate as to the great purpose of the act, may properly be considered in determining what that purpose was and what were the evils sought to be remedied. In *Ho Ah Kow v. Numan*, 5 Sawy. 552, it appeared that the Board of Supervisors of San Francisco had adopted an ordinance which provided that every male person imprisoned in the county jail, etc., should immediately upon his arrival at the jail have the hair of his head “cut or clipped to an uniform length of one inch from the scalp thereof.” The ordinance was attacked as being hostile and discriminating legislation

against the Chinese, and in order to demonstrate this, in spite of the general terms of the ordinance, statements of supervisors made in debate were put in evidence. Mr. Justice Field, speaking for himself and Judge Sawyer, said (5 Sawy. 560):

The statements of supervisors in debate on the passage of the ordinance can not, it is true, be resorted to for the purpose of explaining the meaning of the terms used; but they can be resorted to for the purpose of ascertaining the general object of the legislation proposed, and the mischiefs sought to be remedied.

While it is impossible from the terms of the act itself, and in the light of the foregoing circumstances leading up to its passage, reasonably to conclude that Congress intended to vest the Commission with the general power to prevent all sorts of unfair trade practices in commerce apart from their actual or potential effect upon the trade of competitors, it is not necessary that the facts point to any particular trader or traders. It is enough that there be present or potential substantial competition, which is shown by proof, or appears by necessary inference, to have been injured, or to be clearly threatened with injury, to a substantial extent, by the use of the unfair methods complained of.

In *Federal Trade Comm. v. Winsted Co.*, 258 U. S. 483, it appeared that a manufacturer engaged in selling underwear and other knit goods made partly of wool, labeled them as "natural merino," "natural wool," "Australian wool," etc. It was shown that a substantial part of the consuming public and some buyers and retailers understood the words used in the labels to mean that the underwear was all wool. Part of the public was thereby misled into selling or into buying, as all wool, underwear which was in large part cotton. The labels were false and calculated to deceive, and did in fact deceive, a substantial portion of the purchasing public. This court, after saying that the facts show that a proceeding to stop the practice was in the interest of the public, added (258 U. S. 493):

And they show also that the practice constitutes an unfair method of competition as against manufacturers of all wool knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their product truthfully. For when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods. That these honest manufacturers might protect their trade by also resorting to deceptive labels is no defense to this proceeding brought against the Winsted Co. in the public interest.

And again, at page 494, after reaffirming the existence of the public interest, the court said:

* * * since the business of its trade rivals who marked their goods truthfully was necessarily affected by that practice, the Commission was justified in its conclusion that the practice constituted an unfair method of competition; * * *

The court below thought that the trade to be protected "was that legitimate trade which was entitled to hold its own in the trade field without embarrassment from unfair competition." There is much force in this conception of the act, and the language just quoted from the *Winsted* case seems inferentially to lend it support. Certainly, it is hard to see why Congress would set itself to the task of devising means and creating administrative machinery for the purpose of preserving the business of one knave from the unfair competition of another. In the present case, however, we do not find it necessary further to consider the merits of this view or to determine whether the facts are such as to bring the case within it.

Findings of the Commission justify the conclusion that the advertisements naturally would tend to increase the business [592] of respondent; but there is neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured or tended thus to injure the business of any competitor or of competitors generally, whether legitimate or not. None of the supposed competitors appeared or was called upon to show what, if any, effect the misleading advertisements had, or were likely to have, upon his business. The only evidence as to the existence of competitors comes from medical sources not engaged in making or selling "obesity cures," and consists in the main of a list of supposed producers and sellers of "anti-fat remedies" compiled from the files and records of the Bureau of Investigation of the American Medical Association, a list which appears to have been gathered mainly from newspapers and advertisements. The only specific evidence was that of a witness who said that he had purchased in drug stores in Chicago five different anti-fat treatments and could have purchased a sixth. How long they had been in stock, what was their nature, whether they were intended to be used internally, or in what way they competed or could compete with respondent's preparation does not appear. Of course, medical practitioners, by some of whom the danger of using the remedy without competent advice was exposed, are not in competition with respondent. They follow a profession and not a trade, and are not engaged in the business of making or vending remedies but in prescribing them. It is impossible to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in like trade, or whether competitors, identified or unidentified, were injured in their business, or were likely to be injured, or, indeed, whether any other anti-obesity remedies were sold or offered for sale in competition, or were of such a character as naturally to come into any real competition, with respondent's preparation in the interstate market. All this was left without proof and remains, at best, a matter of conjecture. Some-

thing more substantial than that is required as a basis for the exercise of the authority of the Commission.

Whether the respondent, in what it was doing, was subjecting itself to administrative or other proceeding under the statute relating to the misbranding of foods and drugs we need not now inquire, for the administration of that statute is not committed to the Federal Trade Commission.

A proceeding under section 5 is not one instituted before the Commission by one party against another. It is instituted by the Commission itself, and is authorized whenever the Commission has reason to believe that unfair methods of competition in commerce are being used, and that a proceeding by it in respect thereof would be to the interest of the public. Acting upon its belief, the Commission issues charges and enters upon an inquiry which, of course, it has jurisdiction to make. But one of the facts necessary to support jurisdiction to make the final order to cease and desist, is the existence of competition; and the Commission can not, by assuming the existence of competition, if in fact there be none, give itself jurisdiction to make such an order. If, as a result of the inquiry, it turn out that the preliminary assumption of competition is without foundation, jurisdiction to make that order necessarily fails, and the proceeding must be dismissed by the Commission. Compare *Federal Trade Commission v. Klesner, supra*, pages 29-30 of 280 U. S. That course should have been followed here.

The decree of the court below is *affirmed*.

ARNOLD STONE COMPANY, INC. v. FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Fifth Circuit. May 25, 1931)

No. 6139

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission is authorized to act only in interests of public (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Public interest, to justify Federal Trade Commission in filing complaint based on unfair competition, must be specific and substantial (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68(1).

Stone company's designation of product as "cast stone" or "cut cast stone", and [1018] "Kre-tex stone", "Kre-tex cast stone" and "pink marble", held not misleading and deceptive, and therefore does not constitute unfair competition (15 USCA sec. 45).

¹ The case is reported in 49 F. (2d) 1017. The case before the Commission is reported in 14 F. T. C. 291.

Materials in question were manufactured from about 75 per cent crushed natural stone and about 25 per cent Portland cement. The materials were cast in molds or forms, and after the mixture hardened, subjected to various surface treatments. Undisputed evidence showed that none of the words employed to describe the manufactured product had the effect of misleading or deceiving architects, contractors, or builders, who were the stone company's sole customers.

(The syllabus is taken from 49 F. (2d) 1017)

Petition by the Arnold Stone Co., Inc., to review an order of the Federal Trade Commission, granted, and cause remanded for further proceedings in accordance with opinion.

F. C. Hillyer, of Jacksonville, Fla., for petitioner.

Robt. E. Healy, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, and *Robert H. Winn*, special attorney, Federal Trade Commission, all of Washington, D. C., for respondent.

Before BRYAN, SIBLEY, and HUTCHESON, Circuit Judges.

BRYAN, *Circuit Judge*:

This is a petition to set aside an order of the Federal Trade Commission. The Arnold Stone Co., petitioner, is and for a number of years has been engaged in the business of manufacturing building materials composed of about 75 per cent crushed natural stone, such as granite or marble, and about 25 per cent Portland cement. These materials are cast in molds or forms, and after the mixture hardens it is subjected to various surface treatments by hand or machinery. They are not kept in stock, but are made to order according to specifications for use in the construction of buildings. The principal product so manufactured is designated by petitioner in its advertisements, bids, and contracts as "cast stone" or "cut cast stone". Other products it designates by the terms "Kre-tex stone," "Kre-tex cast stone," and "pink marble". The Commission filed its complaint against petitioner alleging that the terms it employed to describe its various products were misleading and deceptive, and that the practice of using each of them constituted an unfair method of competition within the intent and meaning of section 5 of the act of September 26, 1914. 15 USCA section 45. It was shown by undisputed evidence that petitioner's principal product was called and known as "cast stone" or "cut cast stone" by architects, contractors, builders, building-material men, chemical engineers, scientists, by several branches of the Government, including the Treasury Department, the Bureau of Standards, and by manufacturers of similar products throughout the country. And the Commission in its findings of fact said that there was no evidence of actual deception; that petitioner's products were usually purchased by architects, contrac-

tors, and builders, who testified they were not deceived, and that "possibility of deception in such instances is remote;" but that the use of the word "stone" or "marble" in describing petitioner's products "has the capacity and tendency to mislead, deceive or confuse the purchasing public, and particularly such secondary purchasers of completed buildings, or lessees of completed buildings or parts thereof, in which buildings respondent's products have been used." The Commission also found that "Kre-tex" was a meaningless word taken from the two words "concrete" and "texture". Upon these findings of fact the Commission ordered petitioner to cease and desist from use of the words theretofore used by it to designate its manufactured products unless and until it qualified those words by prefixing the additional word "imitation", "artificial", or some other word equally explanatory.

There was no testimony which tended to show that the words "pink marble" or "Kre-tex stone" deceived anybody. Certainly, according to all the testimony and the Commission's finding of fact, none of the words employed by petitioner to describe any of its manufactured products or materials had the effect of misleading or deceiving architects, contractors, or builders who were the only classes of persons to whom petitioner sold or offered to sell any of such products or materials. It was made equally clear by undisputed evidence that petitioner's competitors used the words "cast stone" and "cut cast stone" to describe similar products and materials manufactured and sold by them. The sum and substance of all the evidence was that the words "cast stone" were under [1019] stood by petitioner's prospective customers and by its competitors to mean just such a product as petitioner manufactured and sold. None of them understood that by the use of these words it was intended to describe stone in its natural state. In the building trade, in which it is exclusively used, cast stone has come to mean a genuine manufactured article composed of crushed natural stone and cement; and to qualify it by the word "imitation" or "artificial", as required by the Commission's order, would convey the meaning that it was not a genuine manufactured article. But to sustain the Commission's order reliance is had on its finding that a purchaser or lessee of a completed building, in the construction of which petitioner's products had been used, might be misled or deceived. That finding or inference is not supported by any testimony, and at best is founded upon a very remote possibility for the occurrence of which it is difficult to conceive that petitioner would be responsible. The Commission is authorized to act only in the public interest, and to justify it in filing a complaint that public interest must be specific and substantial. *Federal Trade*

Commission v. Klesner, 280 U. S. 19, 28. The remote possibility or fanciful theory of private injury is not enough to authorize the Commission to issue an order to cease and desist from a business practice which can not reasonably be said to constitute an unfair method of competition.

The petition for review is granted, and the cause remanded for further proceedings not inconsistent with this opinion.

SHAKESPEARE COMPANY v. FEDERAL TRADE
COMMISSION¹

(Circuit Court of Appeals, Sixth Circuit. June 13, 1931)

No. 5719

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½.

Finding of Federal Trade Commission warranted order requiring manufacturer to desist from entering into or procuring from dealers contracts, agreements, understandings, or assurances that products would be resold at specified prices (Federal Trade Commission Act; 15 USCA secs. 41-51).

Finding of Commission was to effect that manufacturer entered into understandings with and procured promises and assurances from its customers to maintain minimum prices as a condition to accepting their orders or continuing to supply them with its products, and was supported by substantial evidence, consisting of instances of refusal of manufacturer to fill orders except on assurance by customer that he would discontinue selling below suggested minimum prices and refusal to make further shipments on orders that had been accepted until such assurance was given.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 68 (2).

Promises or assurances required of dealer by manufacturer that product would not be sold below minimum price amounted to "unfair trade practice" (Federal Trade Commission Act; 15 USCA secs 41-51).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 68 (4).

Manufacturer has right to refuse to make additional sales to customers cutting prices below requested minimum. (Federal Trade Commission Act; 15 USCA secs. 41-51.)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.

Evidence *held* not to warrant order requiring manufacturer to cease and desist from requesting dealer to report dealers not maintaining resale prices. (Federal Trade Commission Act; 15 USCA secs. 41-51.)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.

Order requiring manufacturer to desist from seeking by any methods and coopera[759]tion of dealers in making effective any policy adopted for maintenance of prices *held* not justified. (Federal Trade Commission Act; 15 USCA secs. 41-51.)

¹ The case is reported in 50 F. (2d) 758. The case before the Commission is reported in 14 F. T. C. 68.

(The syllabus is taken from 50 F. (2d) 758)

Petition by the Shakespeare Co. to review an order of the Federal Trade Commission requiring petitioner to cease and desist from using certain trade methods found to be unfair. Order affirmed in part, and in part set aside.

Robert O. Brownell, of Washington, D. C. (*A. R. Serven* and *D. R. Forbes*, both of Washington, D. C., on the brief), for petitioner.

Alfred M. Craven, of Washington, D. C. (*Martin A. Morrison* and *Robert E. Healy*, both of Washington, D. C., on the brief), for respondent.

Before MOORMAN, HICKS, and HICKENLOOPER, Circuit Judges.

MOORMAN, *Circuit Judge*:

The petitioner is now, and for more than 30 years has been, engaged in the manufacture and sale of fishing rods, reels, lines, and other items of tackle. It sells these products through small sporting goods and hardware stores located in towns and cities in all parts of the United States and to some of the large mail order and department stores. On May 19, 1930, the Federal Trade Commission issued an order requiring petitioner to cease and desist from using certain trade methods found by the Commission to be unfair. The order is in three sections, the first of which orders the petitioner to cease and desist from entering into or procuring from its dealers contracts, agreements, understandings, promises or assurances that its products, or any of them, are to be resold by such dealers at prices specified or fixed by it. This section of the order, as well as the other two sections, is assailed by the petitioner in this proceeding upon the ground that the findings of fact which the Commission made are not sufficient to support it and are themselves not supported by substantial evidence.

The petitioner admits that it furnishes to its customers suggested minimum resale prices, and that in several instances, where a customer has cut prices below those suggested by it, it has refused thereafter to make further sales to the customer; but it contends that it has never made any agreements with its customers, either express or implied, which undertook to obligate them to observe specified resale prices, and therefore has never adopted or engaged in any unfair trade practice within the meaning of the Federal Trade Commission Act. (15 USCA secs. 41-51.)

Although the evidence fails to disclose any express or formal agreement entered into by the petitioner with any of its customers, under which the customer agreed not to sell the petitioner's products below the suggested minimum prices, it is apparent from the proofs that there has been cooperation between the petitioner and its customers which was the equivalent, for practical purposes, of such formal

arrangement. The record shows several instances in which the petitioner refused to fill orders except upon assurance by the customer that he would discontinue selling below the suggested minimum prices. There are to be found, too, instances of the refusal of the petitioner to make further shipments on orders that had been accepted until such assurance was given. Upon assurance being given, the orders were accepted or, having been accepted, the further shipments were made. Thus, while the petitioner had the right to refuse to sell its goods to those who did not sell them at the suggested resale prices, with the further right, we think, to state to them its reasons for so doing, the evidence referred to shows that it put into practice "a system of cooperative effort", within the meaning of that part of the decision in *Toledo Pipe Threading Machine Co. v. Federal Trade Commission*, 11 F. (2d) 337 (6 C. C. A.), upholding the order of the Commission in so far as it required the manufacturer to desist from requiring dealers placing orders to give assurance that they would be governed by the suggested resale prices as a condition precedent to the acceptance of the orders. It also brings this aspect of the case, in our opinion, within the principles announced in *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441. We think, therefore, that the Commission's finding that the petitioner enters into understandings with and procures promises and assurances from its customers to maintain minimum prices as a condition to accepting their orders or continuing to supply them with its products is not only supported by substantial evidence, but likewise is sufficient as a matter of law to support the first section of the order. It is apparent, also, under the deci[760]sions referred to, that the promises or assurances that the petitioner has required of its customers have the effect of suppressing competition and amount to unfair trade practice within the meaning of the statute.

Our approval of this first section of the Commission's order, however, is subject to certain explanatory limitations. The line of demarcation between the permissible and the prohibited, under principles already suggested, is indistinct and rather baffles definition. Perhaps it might be said that those contracts, or those cooperative efforts, which fall within the inhibition of the law, relate primarily to the fixing of prices for goods already in the hands of jobber or retailer, rather than to a refusal by the manufacturer to make further sales to those who cut prices. In this connection we are of the opinion that the petitioner, under the Commission's order, may refuse to sell to those customers who demoralize the market and may announce as its general policy an intention so to do. If some customer cuts prices below the requested minimum the petitioner may refuse

to make additional sales to such customers, but may go no further. Assurances as to future conduct may not be solicited. Should such assurances be given by the customer, notwithstanding the lack of solicitation, they must be considered as gratuitous and as not involving the petitioner in a violation of the Commission's order. They would then amount to no more than persuasion on the part of the customer that the petitioner resume its former relations.

The second part of the order complained of directs the petitioner to cease and desist from requesting its dealers to report the names of other dealers who do not maintain petitioner's resale prices or who are suspected of not maintaining them. The Commission found as a fact that petitioner had requested its dealers to report the names of other dealers who did not maintain its resale prices. The only evidence that we find in the record touching that question is contained in a letter which the petitioner wrote to one of its customers in reply to a letter from the customer complaining of the cutting of prices by a competitor. In this letter petitioner thanked the customer for calling its attention to the price-cutting, stating that it had refused and would continue to refuse to fill the orders of dealers who persisted in cutting prices, and further, that it would assist petitioner if dealers who did not cut prices would call its attention to competitors who did. No general request of this kind was sent to dealers, and the only other evidence with respect to any practice on the part of the petitioner by which it sought to obtain from its dealers the names of other dealers who cut prices consists of responses to letters of complaint in which the petitioner merely expressed to the dealer his thanks for information unsolicitedly given. None of these letters, including the one first mentioned, can be said to amount to a request that the dealer report to the petitioner the names of other dealers who did not maintain the suggested prices. Contrarily the evidence shows, we think conclusively, that petitioner never made such request of any dealer. We need not determine whether, if it had done so, its conduct would be subject to condemnation by the Commission under the rulings in *United States v. Colgate & Co.*, 250 U. S. 300, and *Federal Trade Commission v. Beech-Nut Co.*, *supra*. It is sufficient for the decision of this case that the finding by the Commission that it did is lacking in evidentiary support.

The third portion of the order directed the petitioner to desist from "seeking by any methods and cooperation of dealers in making effective any policy adopted by respondent for the maintenance of prices." This part of the order is too incomplete to be intelligible. If it may be construed as meaning to desist from seeking by any methods of cooperation of dealers to make effective any policy adopted by respondent for the maintenance of prices, it is wholly

unjustified under the evidence save as to the practice which is forbidden by the first section of the order. It would be broad enough under the changed phraseology to cover the procuring of dealers to give assurance of the maintenance of suggested resale prices, but that practice is expressly taken care of by section 1 of the order, and it is not to be supposed that the Commission issued section 3 to cover a practice that it had already forbidden by another provision. As there was no other unlawful practice indulged in by the petitioner, we think section 3 should also be set aside.

It results that section 1 of the order is affirmed and sections 2 and 3 are set aside.

MARIETTA MANUFACTURING COMPANY v. FEDERAL
TRADE COMMISSION¹

(Circuit Court of Appeals, Seventh Circuit. June 16, 1931)

No. 4435

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 75.

Inherently unfair competition does not cease to be so because falsity of manufacturer's representation is so well known that dealers, as distinguished from consumers, are not deceived.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 68 (3).

Manufacturing company, advertising and selling silica product as "Sani-Onyx, a Vitreous Marble," held guilty of unfair competition, which Federal Trade Commission may forbid. (Federal Trade Commission Act sec. 5; 15 USCA sec. 45.)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 45.

Registration of trade-mark, used as part of unfair method of competition, is no protection to use. (Federal Trade Commission Act sec. 5; 15 USCA sec. 45.)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 68 (3).

Manufacturing company, unlawfully advertising and selling silica product as "Sani-Onyx, a Vitreous Marble," held not authorized to retain designation "Sani-Onyx."

(The syllabus is taken from 50 F. (2d) 641)

Petition by the Marietta Manufacturing Co. to review an order of the Federal Trade Commission. Petition denied.

Charles O. Roemler, Ralph G. Lockwood, and Virgil H. Lockwood, all of Indianapolis, Ind., for petitioner.

Robert E. Healy, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, and *Alfred M. Craven*, all of Washington, D. C., for respondent.

¹ The case is reported in 50 F. (2d) 641. Rehearing denied July 25, 1932.
The case before the Commission is reported in 14 F. T. C. 73.

Edwin H. Cassels, of Chicago, Ill. (*Thomas J. Downs* and *Cassels, Potter & Bently*, all of Chicago, Ill., of counsel), for National Association of Marble Dealers, *amicus curiae*.

Before EVANS and SPARKS, Circuit Judges, and WILKERSON, District Judge.

WILKERSON, *District Judge*:

The Marietta Manufacturing Co. for 20 years has manufactured and sold a product used for interior walls, wainscoting, ceilings, table tops, counters, and other like purposes. This product has been advertised and sold as "Sani-Onyx, a Vitreous Marble." It is not a product of nature. It is neither a marble nor onyx. Its chief ingredient is silica, and it is manufactured in slab form and may be used in place of natural or quarried onyx or marble when such onyx or marble is in slab form. It is made in a great variety of colors, and in some of its colors it resembles marble and in others a type of onyx.

The Federal Trade Commission instituted a complaint under section 5 of the act of September 26, 1914, C. 311, 38 Stat. 717, 719. After appropriate proceedings an order was issued requiring the company to cease and desist from (1) using the term "Sani-Onyx, a Vitreous Marble," or the term "Sani-Onyx," as a designation of the product manufactured by it and (2) representing in its advertising matter or by other means, that the product which it manufactures is marble, or onyx.

The order of the Commission rests upon findings of fact as follows:

The company's product is in competition with quarried marble and onyx. In order to create a demand for its product the company advertises in periodicals and sends out trade circulars. In such advertising the company designates its product as "Sani-Onyx, a Vitreous Marble" or "Sani-Onyx," and makes use of statements like the following:

Sani-Onyx, a Vitreous Marble. Truly modern is this new material for bathroom and kitchen walls, ceilings, wainscoting. Sani-Onyx offers distinctive surface textures with colors of rare and exquisite beauty. No substitute or makeshift. Sani-Onyx is a superior product fused from rock ingredients. "What is Sani-Onyx?" Emphatically Sani-Onyx is not a "substitute." It is a superior modern day material for walls, ceilings, wainscoting—wherever in the past you have been forced to use conventional plaster, tile, or marble.

This product is not a product of nature but is a manufactured product, the chief ingredient of which is silica. Among the company's competitors are marble dealers who [642] sell marble and onyx, which are put to substantially the same use as the company's product. In addition to color, the product has other characteristics, so that under certain conditions it may be used as a substitute for

natural onyx or marble and to that extent may be said to be artificial onyx or marble. The designation by the company of its product is false and misleading and has a tendency and capacity to deceive purchasers thereof into the belief that it is onyx or marble and to cause them to purchase it in that belief.

The findings as to the nature of petitioner's product, its resemblance in appearance, in some of its forms to marble and onyx, and its use as a substitute for natural marble or onyx, are sustained either by the admissions of petitioner in its answer before the Commission or by the evidence, including the physical exhibits, in the record.

Petitioners assert that the Commission's finding that the designation of petitioner's product is false and misleading and has the tendency and capacity to deceive purchasers into the belief that the product is onyx or marble is not sustained by the proof. The product, it is asserted, is sold, for the most part to jobbers, contractors, and builders, who could not possibly be misled by the designation or by anything in the advertising into the belief that they were purchasing a kind of marble or onyx. A method of competition, inherently unfair, does not cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers, as distinguished from consumers, are no longer deceived. The honest manufacturer's business may suffer, not merely through a competitor's deceiving his direct customer, the retailer, but also through the competitor's putting into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 494. It may be that building contractors were not deceived. Petitioner, however, carried on an advertising campaign, the effect of which was to create in the minds of the public the belief that this product was a kind of marble and lead them to deal with it as such in agreeing to specifications or buying houses. The designation was adroitly selected and the advertisements cunningly framed so as to go as far as possible in giving the false impression without transcending the limits of literal truth, except in the use of the words "marble" and "onyx." "Sani-Onyx," it is stated, "is a superior product, fused from rock ingredients." The word "vitreous" has some application to the product, but "marble" and "onyx" are wholly inapplicable.

Labeling and advertisements of the kind described in the findings and shown by the record constitute an unfair method of competition, which the Trade Commission has authority to forbid. *Federal Trade Commission v. Winsted Hosiery Co.*, *supra*; *Federal Trade Commission v. Kay* (C. C. A. 7), 35 F. (2d) 160, 162; *Masland Duralather Co. v. Federal Trade Commission* (C. C. A. 3), 34 F. (2d)

733; *Indiana Quartered Oak Co. v. Federal Trade Commission* (C. C. A. 2), 26 F. (2d) 340; *Royal Baking Powder Co. v. Federal Trade Commission* (C. C. A. 2), 281 Fed. 744.

The fact that "Sani-Onyx" is registered as a trade-mark is no protection to petitioner, if the trade-mark is used as a part of an unfair method of competition. *Federal Trade Commission v. Winsted Hosiery Co.*, *supra*; *Federal Trade Commission v. Kay*, *supra*.

Petitioner urges that, even though it is forbidden to represent its product to the public as a "vitreous marble," it should be permitted to retain the designation "Sani-Onyx." Petitioner, by a long course of advertising, has given to the word "Sani-Onyx" a meaning. Its own definition of the word is "a vitreous marble." If it is permitted to retain this designation of its product, it reaps a large part of the benefit resulting from advertising its product as a marble.

The petition is denied.

TEMPLE ANTHRACITE COAL COMPANY *v.* FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Third Circuit. July 9, 1931)

No. 4434

MONOPOLIES. KEY No. 20.

That corporation acquiring stock of competing colliery companies was merely holding company did not deprive Federal Trade Commission of jurisdiction to order divesting of stock (Clayton Act, sec. 7, par. 2 [15 U. S. C. A., sec. 18, par. 2]).

MONOPOLIES. KEY No. 24 (1).

Federal Trade Commission could enjoin restraint on competition between coal companies, irrespective of nature of contracts with wholesalers.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Court must determine whether facts found by Federal Trade Commission warrant conclusion that stock acquisition substantially lessened competition.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY No. 80½.

Evidence *held* insufficient to show that single ownership of stock of companies selling coal to competing wholesalers substantially lessened competition.

There was no evidence produced before the Commission to show the relation between the percentage of coal mined and sold by the subsidiaries of the total output of anthracite coal of the same kind and quantity in the whole anthracite region. Furthermore, there was no evidence of actual direct competition between the two coal companies prior to acquisition of their stock by the holding company, and, while the wholesalers to whom the coal companies respectively sold their coal were in active competition, it appeared that these wholesalers competed also for customers for coal mined by other col[657]lieries, and that they were still competing in the same market in exactly the same way.

¹ The case is reported in 51 F. (2d) 656. The case before the Commission is reported in 13 F. T. C. 249.

(The syllabus is taken from 51 F. (2d) 656)

Petition of the Temple Anthracite Coal Co. to review order of Commission requiring petitioner to cease and desist from alleged violation of the Clayton Act. Order annulled and set aside.

Wm. J. Fitzgerald, John R. Wilson, and John P. Kelly, all of Scranton, Pa., for plaintiff.

Robert E. Healy and Martin A. Morrison, both of Washington, D. C., *Edward L. Smith*, of Phillipsburg, N. J., and *H. A. Cox*, of Washington, D. C., for defendant.

Before BUFFINGTON and WOOLLEY, Circuit Judges, and THOMPSON, District Judge (now Circuit Judge), WOOLLEY, Circuit Judge, dissenting.

THOMPSON, Circuit Judge:

This case comes here upon the petition of the Temple Anthracite Coal Co. for review of an order entered by the Federal Trade Commission requiring the petitioner to cease and desist from alleged violation of the provisions of section 7 of the Clayton Act (act of Oct. 15, 1914, c. 323, sec. 7, 38 Stat. 731).

The uncontradicted facts developed at the hearing are as follows:

The petitioner is a corporation of the State of Delaware organized August 25, 1924, with an authorized capital stock of 60,000 shares of no par value; its registered office is in Dover, Del.; and it maintains an office in Scranton, Pa.

The Temple Coal Co. is a Pennsylvania corporation with its principle office and place of business in Scranton. Its capital consists of 10,000 shares of common stock of par value at \$100, all issued and outstanding in October, 1924, when the Commission's complaint was issued. It has been and is engaged in mining and selling anthracite coal from its mines in Pennsylvania. Prior to 1924, it had acquired and now owns the physical assets of the Northwest Coal Co., Edgerton Coal Co., Sterrick Creek Coal Co., Babylon Coal Co., and Forty Fort Coal Co. It owns all of the capital stock of the Mount Lookout Coal Co., engaged in the mining of anthracite coal in Pennsylvania and in the sale of such coal. It also owns 80 per cent of the capital stock of the Lackawanna Coal Co. Ltd., also engaged in the mining of anthracite coal in Pennsylvania and the sale of such coal.

The collieries owned by the Temple Coal Co. and those in which it owns a controlling stock interest are located in Lackawanna and Luzerne Counties in the northern anthracite field of Pennsylvania. In August, 1924, the total coal in place in all of the proporeties owned, controlled, and leased by the Temple Coal Co., the Lackawanna Co. Ltd., and the Mount Lookout Coal Co. was approximately 66,730,205 tons and the value of the physical properties of those companies was in coal \$9,192,750 and in property \$3,450,000.

Since 1914, the coal mined by the Temple Coal Co., the Lackawanna Coal Co. Ltd., and the Mount Lookout Co. has been and is sold through Thorne, Neale & Co. Inc., which is engaged in the business of buying and selling anthracite and bituminous coal and maintains offices in Philadelphia, Buffalo, Chicago, Baltimore, and New York. From its offices sales of coal are solicited throughout a large territory traveled by representatives of such offices. The Buffalo office solicits and makes sales in Canada also. Thorne, Neale & Co. Inc., secures orders for coal mined by Temple Coal Co., Lackawanna Coal Co. Ltd., and Mount Lookout Coal Co., which orders are transmitted to Temple Coal Co. by Thorne, Neale & Co. Inc. These orders give the name of the consignee, destination, route of shipment, the equipment of the cars containing the coal, the mine from which the coal is to be shipped, the quantities and kinds of coal ordered and the price of the coal f. o. b. mine. If the price mentioned in the order is satisfactory to Temple Coal Co. the coal is shipped by Temple Coal Co. to the customer at the price offered. Thorne, Neale & Co. Inc., collects from the purchaser the selling price of the coal, paying to Temple Coal Co. the selling price less a commission of 4 per cent for making the sale. In the event that the price on the order given by Thorne, Neale & Co. Inc., to Temple Coal Co. for the coal to be shipped is not satisfactory to Temple Coal Co., the order is not filled. Such has been the method of sale employed by Temple Coal Co., Mount Lookout Coal Co., and said Lackawanna Coal Co. Ltd., with Thorne, Neale & Co. Inc., at least since 1914.

When shipments of coal are made directly by Temple Coal Co. to Thorne, Neale & Co. Inc., the coal is billed to Thorne Neale [658] & Co. Inc., at a price agreed upon between it and Temple Coal Co., which price is paid to Temple Coal Co. by Thorne, Neale & Co. Inc., irrespective of the price received by Thorne, Neale & Co. Inc., from the ultimate purchaser.

The greater part of the shipments of coal on orders furnished by Thorne, Neale & Co. Inc., went into interstate commerce. Some shipments were made to their customers in Canada.

The East Bear Ridge Colliery Co. is a Pennsylvania corporation with its principal office and place of business in Scranton, Pa. Its authorized capital is 25,000 shares of common stock of a par value of \$25 each. It is engaged in the business of mining anthracite coal in Pennsylvania and in selling such coal. Its collieries are located in the southern anthracite region in Schuylkill County, Pa., about seventy miles distant from the collieries of the Temple Coal Co. and the other coal companies operated by the latter company. Its physical property in September, 1924, consisting of its mines, improvements, and developments, was valued at \$893,492.42 and its coal tonnage in

the mine was estimated at 4,700,700 tons. Since 1914, the coal mined by the East Bear Ridge Colliery Co. has been sold through Madeira, Hill & Co., which is engaged in the business of buying and selling anthracite and bituminous coal.

Madeira, Hill & Co. maintains offices in Philadelphia, New York, Boston, and Washington, from which offices sales of coal are solicited throughout a large territory traveled by the representatives of such offices. Madeira, Hill & Co. secures orders for coal mined by East Bear Ridge Colliery Co., which orders are transmitted to East Bear Ridge Colliery Co. by Madeira, Hill & Co. These orders give the name of the consignee, destination, route of shipment, the equipment of the cars containing the coal, the quantities and kinds of coal ordered and the price of the coal f. o. b. mine. If the price mentioned in the order is satisfactory to East Bear Ridge Colliery Co., the coal is shipped by East Bear Ridge Colliery Co. f. o. b. mine consigned to the customer at the said price, Madeira, Hill & Co. paying to East Bear Ridge Colliery Co. the selling price of the coal less a commission of 4 per cent for making such sale. Madeira, Hill & Co. collects from the purchaser the selling price of the coal. In the event that the price on the order given by Madeira, Hill & Co. to East Bear Ridge Colliery Co., for the coal to be shipped is not satisfactory to East Bear Ridge Colliery Co., the order is not filled. Such has been the method of sale employed by East Bear Ridge Colliery Co. with Madeira, Hill & Co. at least since 1914.

In addition to shipping coal to customers secured by Madeira, Hill & Co., East Bear Ridge Colliery Co., in the usual course of its business, ships coal directly to Madeira, Hill & Co. When such shipments of coal are made directly by East Bear Ridge Colliery Co. to Madeira, Hill & Co., the coal is billed to Madeira, Hill & Co. at a price agreed upon between them and East Bear Ridge Colliery Co., which price is paid to East Bear Ridge Colliery Co. by Madeira, Hill & Co., irrespective of the price received by Madeira, Hill & Co. from the ultimate purchaser.

The coal sold on orders furnished by Madeira, Hill & Co. was shipped f. o. b. mines, consigned to purchasers in Pennsylvania and interstate commerce. The Temple Coal Co., the Mount Lookout Coal Co., the Lackawanna Coal Co. Ltd., and the East Bear Ridge Colliery Co. sold coal of the same kinds and sizes, and Thorne, Neale & Co. Inc. and Madeira, Hill & Co. were in active competition in securing orders for coal. The orders solicited, obtained, and filled through Thorne, Neale & Co. were in the same territory, in the same cities, and in many instances, from the same dealers from whom orders for coal, mined by the East Bear Ridge Colliery Co., were solicited, obtained, and filled through Madeira, Hill & Co.

On or about October 11, 1924, the petitioner, the Temple Anthracite Coal Co. acquired by purchase, and has ever since owned, all of the outstanding capital stock of the Temple Coal Co., and on or about the same date acquired by purchase, and ever since such acquisition has owned, 98 per cent of the outstanding capital stock of the East Bear Ridge Colliery Co. Through its stock ownership, the Temple Anthracite Coal Co. has chosen the officers and directors of the Temple Coal Co. and its subsidiary companies and of the East Bear Ridge Colliery Co.

The Federal Trade Commission found that the effect of the acquisition by the Temple Anthracite Coal Co. of the capital stock of Temple Coal Co. and the East Bear Ridge Colliery Co. and the use of such stock has been and is to substantially lessen competition in interstate [659] commerce between the Temple Coal Co. and the East Bear Ridge Colliery Co. in violation of the second paragraph of section 7 of the Clayton Act. The Commission thereupon entered an order upon the petitioner in the alternative, requiring it, within ninety days of the date of service upon it of the order, to divest itself in good faith of all the capital stock of the Temple Coal Co. owned by it and all of its interest therein; or, within ninety days, to divest itself in good faith of all the capital stock of the East Bear Ridge Colliery Co. owned by it and all of its interests therein.

The petitioner raises the question whether the Federal Trade Commission had jurisdiction to make the order complained of, its contention being that, because it is a holding company and transacts no business except as holder and owner of the stock of the Temple Coal Co. and the East Bear Ridge Colliery Co., and is not engaged in interstate commerce, it does not come within the terms of the Clayton Act. The second paragraph of section 7 of the Clayton Act, upon which the complaint was based, reads as follows:

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

It is clear from the language of the act that it is the fact of the stock of two or more corporations engaged in interstate commerce being acquired by any other corporation, producing the effect, through the stock-owning corporation, of, either substantially lessening competition between them, or, restraining commerce, or, tending to create a monopoly of any line of commerce, that gives Congress power to prohibit the acquiring of such stock. The power of Congress to legislate upon the subject is not, therefore, dependent upon

the corporation prohibited from such stock ownership being itself engaged in interstate commerce. The very language of the act answers the question raised by the petitioner.

It is argued quite extensively on the part of the petitioner that the sales contracts of the Temple Coal Co. with Thorne, Neale & Co., and those of East Bear Ridge Colliery Co., with Madeira, Hill & Co., under which the coal of the respective companies are sold by the respective sales agents, are not contracts of agency but are contracts of sale. That contention is made because of the implied concession that, if they are agents of the coal mining companies, then the shipments of coal f. o. b. mines, consigned to customers of the sales agents, are, under the doctrine of agency, the acts of the principal, and the customers are the customers of the principal. Therefore, shipments by the coal companies at the mines f. o. b. cars constitute engagement of the coal companies in interstate commerce. If, however, Thorne, Neale & Co., and Madeira, Hill & Co. are purchasers of the coal, then the delivery to the railroad company at the mines divests title in the coal when it is loaded upon the car, which it is contended, is not interstate commerce. For the purposes of this case, we do not deem it necessary to decide whether the contracts with the sales agents are, in the law, contracts of agency, as contended by the Commission, or contracts of sale as contended by the petitioner. In either case, the coal so shipped becomes a part of interstate commerce and the shipments are within the regulatory power of Congress. *Penna R. R. Co. v. Clark Bros. Coal Mining Co.*, 238 U. S. 456; *Penna R. R. Co. v. Sonman Shaft Coal Co.*, 242 U. S. 120; *Swift & Co. v. United States*, 196 U. S. 375.

We conclude that the case was within the jurisdiction of the Federal Trade Commission in carrying out the power which Congress has granted it.

The Commission reached the conclusion as an ultimate fact that the effect of the purchase, acquisition, and holding of the stock of the two corporations by the respondent has been or may be to substantially lessen competition between the corporations, as alleged in its complaint. We will, therefore, consider whether that ultimate finding of fact is sustained by the basic facts as found from the evidence before the Commission. While the act provides that the findings of fact made by the Commission are final and conclusive, it still remains the duty of the supervising court to determine whether the facts found are such as to warrant the conclusion that the effect of the acquisition of the stock of the two corporations is or may be to substantially lessen competition between [660] them. See *Curtis Publishing Co. v. Federal Trade Commission*, 270 Fed. 881, 909. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568,

579, 580, *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 297.

It is established by the evidence and found by the Commission that Thorne, Neale & Co. Inc. and Madeira, Hill & Co. have been and are in active competition in selling all of the coal of the respective collieries, excepting some small quantities sold locally.

There are no facts found and we find no evidence produced before the Commission to show the relation between the percentage of coal mined and sold by the Temple Coal Co. and its subsidiaries and that sold by the East Bear Ridge Collier Co. to the total output of anthracite coal of the same kind and quality in the whole anthracite region. From the facts found as to the value of the annual output of the respective mines, it is quite apparent that the percentage of these mines to the total output can not be consequential. Therefore, if competition were lessened, its effect upon the whole interstate trade in anthracite coal would not tend to create a monopoly through substantially lessening competition. There is no fact found or evidence to show that there was, prior to the acquisition of the stock, actual direct competition between the Temple Anthracite Co. and the East Bear Ridge Coal Co. The Temple Coal Co. disposed of all of its coal either by sale or agency contract, through Thorne, Neale & Co. Inc. The East Bear Ridge Colliery Co. disposed of all of its coal either by sale or agency contract through Madeira, Hill & Co. However, the evidence shows and the facts found from the evidence show that these two wholesalers in coal were and are in active competition in obtaining orders for sale and in selling to customers through their offices in various cities.

As to this competition, the Commission has found in paragraph 8 as follows:

Said Temple Coal Co., said Mount Lookout Coal Co., said Lackawanna Coal Co., Ltd., and said East Bear Ridge Colliery Co. sold coal of the same kinds and sizes, and said Thorne, Neale & Co. Inc. and said Madeira, Hill & Co. were in competition in securing orders for coal, orders for coal mined by said Temple Coal Co., said Mount Lookout Coal Co. and said Lackawanna Coal Co. Ltd. being solicited, obtained and filled through said Thorne, Neale & Co. Inc., in the same territory, in the same cities and, in many instances, from the same dealers from whom orders for coal mined by said East Bear Ridge Colliery Co. were solicited, obtained, and filled through said Madeira, Hill & Co.

It is shown that, at the time of the hearings and during the period covered by the testimony, these wholesalers were competing in the open market for customers not only for this coal, but for coal mined by other collieries, and that they are still competing in the same markets and in exactly the same way as they were before the complaint was filed. As long as the contracts with the wholesalers continue in existence, and there is nothing in the case to show that

they will not continue, they are each under the same incentive to acquire and sell the output of the respective collieries as they were prior to the complaint. There is no evidence and no facts are found to show that competition between Thorne, Neale & Co., Inc., and Madeira, Hill & Co., in selling the coal of these two companies, has been or may be reduced through the ownership of the stock of the respective companies by Temple Anthracite Coal Co. The only effect which the ownership may be found to have brought about is the reduction of overhead and operating expenses.

In *International Shoe Co. v. Federal Trade Commission*, *supra*, Mr. Justice Sutherland says:

Section 7 of the Clayton Act, as its terms and the nature of the remedy prescribed plainly suggest was intended for the protection of the public against the evils which were supposed to flow from the undue lessening of competition. In *Standard Oil Co. v. Federal Trade Commission*, 282 Fed. 81, 87, the Court of Appeals for the Third Circuit applied the test to the Clayton Act which had theretofore been held applicable to the Sherman Act,¹ namely, that the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or unduly obstructing the due course of trade. In *Federal Trade Commission v. Sinolair Co.*, 261 U. S. 463, 476, referring to the Clayton Act and the Federal Trade Commission Act, this court said:

"The great purpose of both statutes was to advance the public interest by securing fair [661] opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain."

Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 357; that is to say, to such a degree as will injuriously affect the public.

We can not conclude, because of the ownership in one corporation of the stock of two corporations whose output is sold under contracts with competing wholesalers as distributors, who are found to be in active competition, that these contracts will or are likely to be annulled or terminated. We must take the facts as they exist and, finding as we do that Thorne, Neale & Co., Inc., and Madeira, Hill & Co. are in active competition, we assume that the interests of the public will be preserved so long as that competition continues.

The Commission found in paragraph 10 of its finding of fact as follows:

The effect of the acquisition by respondent Temple Anthracite Coal Co. of the said capital stocks of said Temple Coal Co. and of said East Bear Ridge Colliery Co., and the use of such stocks by the voting or granting of proxies, or otherwise, has been and is to substantially lessen competition in interstate commerce between said Temple Coal Co. and said East Bear Ridge Colliery Co.

With no evidence in the case to support the finding of fact that the effect of the acquisition of the stock "has been and is to substantially

¹ 15 U. S. C. A., sec. 1 et seq.

lessen competition", our conclusion is that the actual active competition which is shown by the evidence, without contradiction, to have existed and to continue to exist between Thorne, Neale & Co., Inc., and Madeira, Hill & Co. negatives, so long as it may exist, the very effect which the Commission has found to be caused by the acquisition by the Temple Anthracite Coal Co. of the capital stocks of the mining companies.

It is, therefore, ordered that the order of the Federal Trade Commission be annulled and set aside.

WOOLLEY, *Circuit Judge*, dissenting:

I am moved to dissent from the judgment of the court because of the different way in which I view the pivotal point of the case. Of the facts, fully and correctly stated in the opinion, I shall stress but two.

One fact is that the complaint charges a violation of the single provision of section 7 of the Clayton Act which forbids the acquisition of two corporations by a third "where *the effect* of such acquisition * * * *may be* to substantially lessen competition *between* such corporations * * *". The restraint of trade and monopoly provisions of the section were not invoked and are not involved.

The other fact is that prior to their acquisition by the petitioner in 1924 the two coal companies conducted business under like sales systems, through like sales agencies, with a like power reserved by each to decide when it would and would not fill orders for coal according as it found them satisfactory or unsatisfactory. Prior to the consolidation, these corporations were selling in the same markets in competition with each other.

Thus far I follow the opinion of the court. But the petitioner—the holding company—on a showing that the same sales systems operating through the same sales agencies continue in the business practices of the two companies since their acquisition, contends that, in consequence, the same competition exists, must exist, as before. This contention the court has sustained. It is just here that I am constrained respectfully to depart from its opinion for the reason that, while the two underlying companies before their absorption could, because of their complete independence, separately refuse orders that were unsatisfactory without disturbing competition between them, the power to decide when to accept and refuse orders passed from them on their acquisition by the petitioner and became vested in the petitioner which thereafter could alone determine when orders were unsatisfactory and by directing its self-appointed officials of the two corporations to decline such orders would "substantially lessen competition"—indeed, actually end competition—between the two corporations. Therefore the competition between the underlying

companies is not now even potentially the competition which existed between them before their acquisition by the petitioner. Then it was real; now it is formal. Then it arose from the desire of each for individual gain and depended on separate action; now it arises from the desire of a third corporation for gain and depends on the power of that corporation, exercised without restraint, to increase its gain by reducing loss[662]es arising from competition between what are now practically its own products by directing its subsidiaries not to fill orders. The petitioner thus has power, ever present, to be exercised at its will, to do the thing denounced by the law. In my judgment, when the petitioner acquired the underlying coal companies and at the same time acquired the power to cause them to decline unsatisfactory orders, there was a complete transfer of power with respect to competition, producing a situation "where the effect * * * may be to substantially lessen competition between such corporations" and certainly will be to lessen or stop competition whenever the temptation to use the power shall arise.

In arriving at the conclusion that the evidence sustains the order of the Commission I have kept in view the fact, at different times lost sight of in this case, that we are not concerned with the lessening of competition between these two companies and other companies in the industry, but are concerned with the lessening of competition between the two companies themselves.

FLYNN & EMRICH CO. v. FEDERAL TRADE COMMISSION ¹

(Circuit Court of Appeals, Fourth Circuit. October 12, 1931)

No. 3142

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 80½.

Prerequisite of proceeding looking toward order to desist are that methods complained of are unfair methods of competition in commerce and that such proceeding appears to be in interest of public (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 80½.

Whether methods employed by manufacturer are in bad faith is fact question (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 80½.

Inferences reasonably to be drawn from facts are for Trade Commission (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

EVIDENCE. KEY-NO. 60.

Good faith is presumed until contrary is shown.

¹ The case is reported in 52 F. (2d) 836. The case before the Commission is reported in 14 F. T. C. 310.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 80½.

Record *held* not to show public interest justifying desist order against threatening patent suits (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

Testimony showed that there was but one competitor involved, that only five purchasers were approached by salesmen of corporation against whom desist order was issued, and that not one of these was prevented from purchasing competitor's appliance. There was no evidence or contention that competitor's appliance was in any way superior or that any attempt was being made to impose upon public by sale of inferior article.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 68 (1).

Parties can be enjoined from continuing to claim patent infringement without suing and in bad faith.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 80½.

Trade Commission should act only when public interest is involved (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION. KEY-NO. 80½.

Record showing no basis for finding that corporation threatening suits in connection with patents, but not suing, acted in bad faith, cease and desist order *held* erroneous (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

(The syllabus is taken from 52 F. (2d) 836)

Petition by Flynn & Emrich Co. to review order of the Commission requiring petitioner to cease and desist from threatening others with suits in connection with certain patents claimed by petitioner, granted.

George E. Kieffner and *Redmond O. Stewart*, both of Baltimore, Md. (*Stewart & Pearre*, of Baltimore, Md., on the brief), for petitioner.

Henry C. Lank, special attorney Federal Trade Commission, and *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, both of Washington, D. C. (*Robt. E. Healy*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for respondent.

Before PARKER, NORTHCOTT, and SOPER, Circuit Judges.

NORTHCOTT, Circuit Judge:

This is a petition to review the action of the Federal Trade Commission in issuing an order that the petitioner cease and desist from threatening any person, firm, or corporation with suits in connection with patents claimed by petitioner covering a certain coal-feeding mechanism, known as the "Huber Semi-Mechanical Stoker," manufactured by petitioner.

The pertinent part of the order of the Commission reads as follows:

It is now ordered, That the respondent, Flynn & Emrich Co., its officers, agents, representatives, and employees, in connection with the sale of its stokers in interstate commerce, cease and desist from directly or indirectly threatening any person, firm, or corporation with patent infringement, damage, or other suit or suits in bad faith for the purpose of diverting the trade of any competitor or competitors to it and without intention to sue.

This order was entered after action regularly taken by the Commission and after the matter was referred to an examiner, who [837] heard the testimony of witnesses and made his report.

The facts as found by the Commission were that the petitioner is a Maryland corporation with its place of business in Baltimore, engaged in the manufacture and sale of stokers, grates, and coal-feeding mechanisms; that petitioner in carrying on its business is engaged in interstate commerce in active competition with others engaged in the manufacture and sale of similar products; that among the competitors of petitioner is the Perfection Grate & Stoker Co. of Springfield, Mass., also known as the Perfection Grate & Supply Co.; that petitioner's stoker was covered by letters patent; that after consultation with reputable patent attorneys, and upon their advice, petitioner informed its salesmen that the stoker sold by the Perfection company was an infringement upon petitioner's patent, and furnished these salesmen with papers showing the patents and alleged infringements; that these salesmen called upon five customers who either had purchased or were in the act of purchasing stokers from the Perfection company, and told them of petitioner's patent claims, and warned the purchasers that they might become liable for infringement; that during the period between December, 1925, and March, 1927, while these salesmen were making these representations, the petitioner had not decided to sue, and had not done so in March, 1929, when the Commission issued the complaint in this cause; that petitioner's instructions to its salesmen were not given in good faith and were given for the purpose of preventing, hindering and obstructing a competitor from making sales of its products.

From these facts the Commission concluded that petitioner's actions were to the prejudice of the public and petitioner's competitors, and constituted unfair methods in competition in commerce within the intent and meaning of section 5, of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

In its answer to the complaint the petitioner admitted instructing its salesmen that they could claim infringement of the patents, but

insisted that these instructions were given in good faith; that the patents were being infringed by the Perfection company, and that no suit had been brought because of the expense necessarily involved in the litigation, no matter how it might terminate.

The record also shows correspondence between the petitioner and the Perfection company, in which the petitioner threatened suit for infringement, and the Perfection company on the other hand threatened suit to enjoin petitioner and its agents from continuing the representations, but no suit was brought by either company.

The examiner, to whom the matter was referred by the Commission, took the testimony of witnesses and reported his findings. This report concluded as follows:

I find on the evidence that the instructions given to its salesmen by the respondent were made in good faith and for the purpose of protecting the rights which they were advised by their attorneys were secured by the letters patent, and were not for the purpose of hindering, embarrassing, or otherwise eliminating competition of the Perfection Grate & Supply Co.

This report of the examiner was brought up to this court as addendum to the record, and it is contended by the attorneys for the Commission that the report should not be considered for the reason that it is no part of the record in the case, and they cite the following cases in support of their contention: *Raladam Company v. Federal Trade Commission*, 42 F. (2d) 430; *J. W. Kobi Co. v. Federal Trade Commission*, 23 F. (2d) 41; *Moir et al. v. Federal Trade Commission*, 12 F. (2d) 22; *Q. R. S. Music Co. v. Federal Trade Commission*, 12 F. (2d) 730.

While it is difficult to understand just why the report of an examiner, who has taken the testimony, heard and seen the witnesses and observed their demeanor, should not be included in the record, yet, in view of our conclusion on the other points involved in the case, it is not necessary to decide this question or to give the examiner's report any consideration.

As was said by Mr. Justice Sutherland in the case of the *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643:

By the plain words of the act, the power of the Commission to take steps looking to the issue of an order to desist depends upon the existence of three distinct prerequisites: (1) That the methods complained of are unfair; (2) that they are methods of competition in commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the interest of the public.

[838] In considering the first of these requisites it must be remembered that the Federal Trade Commission Act, section 5, provides that "The findings of the Commission as to the facts, if supported by testimony, shall be conclusive." The question of faith, "good" or "bad," is clearly a finding of fact and inferences rea-

sonably to be drawn from the facts are "for the Commission." *Federal Trade Commission v. Pacific States, etc.*, 273 U. S. 52.

An examination of the record in this case fails to disclose any testimony to support a finding of bad faith on the part of the petitioner. Good faith is always presumed until the contrary is shown by proof. Here the petitioner, in claiming infringement, did only what its officers undoubtedly thought they had a perfect right to do and what they had been advised to do by their attorneys, who were clearly acting in perfect good faith. There was certainly no more wrong involved in petitioner's threat to sue the Perfection company for infringement of their patents than there was in the act of the Perfection company in threatening to sue to enjoin the petitioner and not doing it. A reading of the record leads to the inevitable conclusion that in doing what they did officers of petitioner did only what they thought, and were advised, they had a right to do to protect their legitimate interests. The reason given for the fact that no suit was brought was certainly a logical and reasonable one.

For decisions bearing on what one, who believes his patents are being infringed, may or may not do without being held to be acting in bad faith, the following are cited: *Atlas Underwear Co. v. Cooper Underwear Co.*, 210 Fed. 347; *Price-Hollister Co. v. Warford Corporation*, 18 F. (2d) 129; *Kelley v. Ypsilanti, etc., Co.* 44 Fed. 19; *Heuser v. Federal Trade Commission*, 4 F. (2d) 632; *Racine Paper Goods Co. v. Dittgen*, 171 Fed. 631; *Farquhar Co. v. National Harrow Co.*, 102 Fed. 714; *Warren Featherbone Co. v. Landauer et al.*, 151 Fed. 130; *Electric Renovator Manufacturing Co. v. Vacuum Cleaner Co. et al.*, 189 Fed. 754; and *Adriance, Platt & Co. v. National Harrow Co.*, 121 Fed. 827.

In considering the third requisite we are again confronted with what we consider an error of the Commission, as there was no public interest involved. The testimony shows that the only competitor involved was the Perfection company. Only five purchasers of stokers were approached by petitioner's salesmen, and not one of these was prevented from purchasing the Perfection company's appliance. There is no evidence, or even contention, that petitioner's stoker was in any way inferior to the Perfection company's stoker, or that any attempt was being made to impose upon the public by the sale of an inferior article. The courts have uniformly held that parties claiming infringement without suing and in bad faith can be enjoined from continuing such a course. *Sun-Maid Raisin Growers v. Avis et al.*, 25 F. (2d) 303, and cases there cited.

The case here is rather a controversy of a private and personal nature between the petitioner and the Perfection company, and could

have been readily settled in the courts, and if a proper case were made an injunction would have issued against the petitioner. Certainly Congress never intended that the machinery of the Federal Trade Commission, severe as its operation can be made, should be set in motion for the settlement of private controversies, when the courts can act. The official character of the Commission makes it all the more necessary that it act only when the public interest is involved. It was never intended that the Commission should act the part of a petty traffic officer in the great highways of commerce.

A discussion of this question will be found in *Federal Trade Commission v. Klesner*, 280 U. S. 19, where Mr. Justice Brandeis, in an able opinion, says:

While the Federal Trade Commission exercises under section 5 the functions of both prosecutor and judge, the scope of its authority is strictly limited. A complaint may be filed only "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public." This requirement is not satisfied by proof that there has been misapprehension and confusion on the part of purchasers, or even that they have been deceived—the evidence commonly adduced by the plaintiff in "passing off" cases in order to establish the alleged private wrong. * * *

In determining whether a proposed proceeding will be in the public interest the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint the public interest must be specific and substantial. Often it is so, because the unfair method employed threatens the existence of present or potential competition. Sometimes, because the unfair method is being employed under circumstances which involve flagrant oppression of the weak by the strong. Sometimes, because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it. * * *

The undisputed facts, established before the Commission, at the hearings on the complaint, showed affirmatively the private character of the controversy. It then became clear (if it was not so earlier) that the proceeding was not one in the interest of the public; and that the resolution authorizing the complaint had been improvidently entered * * *.

A study of the facts in the Klesner case shows a marked similarity to the facts in the instant case, and the decision of the Supreme Court there is controlling here. See also, *Raladam Co. v. Federal Trade Commission*, 42 F. (2d) 430, afterwards affirmed in *Federal Trade Commission v. Raladam Co.*, *supra*.

The record shows no basis for the action of the Commission in finding that petitioner had acted in bad faith, and the order to cease and desist was erroneous. The prayer of the petition is granted.

V. VIVAUDOU, INC., v. FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Second Circuit. November 2, 1931)

No. 3

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Court may review record to determine whether evidence requires conclusion contrary to Federal Trade Commission's conclusion respecting stock acquisition (Clayton Act sec. 7; 15 USCA sec. 18).

MONOPOLIES KEY-NO. 20.

No monopolistic tendency could exist in acquisition by cosmetic manufacturer, doing \$3,000,000 business, of companies doing \$4,000,000 business, where similar business throughout nation was at least \$125,000,000 (Clayton Act sec. 7; 15 USCA sec. 18).

There was no evidence of increase in price, or elimination or curtailment of any of lines of production, or of division of territory, brought about through acquisition of other cosmetic companies, and it appeared that effect was to increase sales of products of each company, which were sold under their various trade-names; that country at large was more thoroughly canvassed, and effort was made to sell articles as branded by each company; and that each company had its separate sales force with salesmen who handled their respective lines to exclusion of others, and there was no increase in cost of distribution.

MONOPOLIES KEY-NO. 20.

Unless monopoly or monopolistic tendency exists, court can not conclude public has interest referred to in statute prohibiting stock acquisition (Clayton Act sec. 7; 15 USCA sec. 18).

MONOPOLIES KEY-NO. 20.

Where cosmetic manufacturer doing small business in certain products acquired companies doing large business therein, competition held not substantial, and not substantially lessened (Clayton Act sec. 7; 15 USCA sec. 18).

(The syllabus is taken from 54 F.(2d) 273)

Petition to review order of Commission. Order reversed.

Olwany, Eisner & Donnelly, of New York City (*Mark Eisner*, of New York City, of counsel), for petitioner.

Robert E. Healy, chief counsel, *Martin A. Morrison*, assistant chief counsel, and *Edward L. Smith*, all of Washington, D. C., for respondent.

Root, Clark & Buckner, of New York City (*Grenville Clark* and *Joseph Schreiber*, both of New York City, of counsel), amici curiae.

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges.
MANTON, *Circuit Judge*:

The complaint against the petitioner is that it, a Delaware corporation, with its principal place of business in New York and

¹ Reported in 54 F.(2d) 273. For case before Commission, see 13 F. T. C. 306.

engaged in the business of manufacturing cosmetics and selling them in interstate commerce throughout the United States, acquired on December 31, 1925, and still owns, all the outstanding capital stock of the Alfred H. Smith Co., a New York corporation, with its principal place of business in New York City, and also engaged in interstate commerce in the preparation and sale of cosmetics. It is said that the effect of this acquisition is to substantially lessen competition between the two companies, to restrain commerce in cosmetics in certain sections or communities and tends to create a monopoly of cosmetics in the petitioner. The complaint charges also, that on November 17, 1926, the petitioner organized the Parfumerie Melba, Inc., a New York corporation, with its principal place of business in the city of New York, and that at the time of its organization it acquired and still owns all the capital stock of that company; that on December 31, 1926, the Parfumerie Melba, Inc., purchased as a going concern the cosmetic business of the Melba Manufacturing Co., an Illinois corporation, engaged in manufacturing and distributing cosmetics in interstate commerce throughout the country. The effect of this acquisition, it is charged, was to substantially lessen competition between the petitioner and the Parfumerie Melba, Inc., to restrain commerce in certain communities and to tend to create a monopoly in the petitioner. After hearings, the Commission issued the order appealed from.

[274] The Commission found that the petitioner is engaged in interstate commerce, selling its branded products throughout the United States, and that it is an important factor in the industry of selling extracts, talcums, rouges, creams, nail preparations, and similar cosmetics. That in 1925 its net sales amounted to \$3,134,785.28, and in 1926, \$2,897,346.91. One of its competitors was the Alfred H. Smith Co., whose net sales in 1925 amounted to \$2,492,129, and in 1926, \$2,501,379.52. It was found to be in competition with the petitioner in the same line of cosmetics. At the time of the acquisition of the Smith Co.'s stock, the petitioner sold the following lines: Mavis, Narcisse de Chine, LaBoheme, Jasmin-Arly, Lilas Arly and Mai D'Or, and Myrurgia. The acquisition of the Smith Co. gave petitioner control of two lines of that company known as Djer-Kiss and Kadorys. The acquisition of the Parfumerie Melba, Inc., gave it the Melba lines of Lov Me, Bouquet, Fleurs, Ador-Me and Melba. The Melba Co. did a business in 1926 of \$1,872,141.33.

It was found that after obtaining control of both the Smith Co. and the Parfumerie Melba Co., in the manner described, the business of these companies was operated under the supervision and control of the petitioner. The selling organization and business of the Melba Manufacturing Co. was taken over by the Parfumerie Melba

Co. Its property was moved from its principal place of business in Chicago to the factory of the petitioner in New York City, and there indiscriminately used by the petitioner in the manufacture of its products and that of the Smith company and the Parfumerie Melba Co. The property of the Smith company was also moved to the petitioner's plant in New York City and indiscriminately used in the manufacture of petitioner's products. The Commission concluded that there was a violation of section 7 of the Clayton Act by the acquisition and continued ownership of these companies, as described, and that this substantially lessened competition between the companies, restrained commerce throughout the United States and tended to create a monopoly in the petitioner of perfumes, toilet waters, face powders, cosmetics, and other toilet articles. The order directs that within 90 days, the petitioner divest itself in good faith of the stock thus owned by it of the Parfumerie Melba, Inc., and the Alfred H. Smith Co., with directions to report within four months in writing, setting forth in detail the manner and form in which the order has been complied with.

It appears from the record that the business done by the three corporations in 1926 amounted to \$7,270,866 out of a total throughout the United States of \$173,000,000, as testified by one witness, and \$125,000,000, at American manufacturers' prices, by another witness, the latter quoting from the Census Bureau figures.

The question presented on this appeal is whether the competition between these companies has been substantially lessened by reason of the stock acquisition and ownership referred to, and whether the public has been injuriously affected. Section 7 of the act (38 Stat. 730, 731, sec. 18, USC, title 15) provides:

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce * * *

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition.

The test was recently stated in *International Shoe Co. v. Commission*, 280 U. S. 291, where the court said, referring to ownership of stock condemned under section 7 of the Clayton Act:

Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 357; that is to say, to such a degree as will injuriously affect the public. Obviously, such acquisition will not produce the forbidden result if there be no

pre-existing substantial competition to be affected; for the public interest is not concerned in the lessening of competition which, to begin with, is itself without real substance.

This court may review this record to determine whether the evidence requires a con[275]trary conclusion to that arrived at by the Commission as to the effect of the acquisition of the stock of the Smith company and the Parfumerie Melba, Inc., in substantially lessening competition. We must consider the extent of the trade carried on by the three companies and compare it with the volume of business carried on by their competitors previous to the period of ownership of the stock, and endeavor to ascertain whether the public interest has been affected. In *Federal Trade Commission v. Curtis Co.*, 260 U. S. 568, it was held that the court must inquire whether the Commission's findings of fact are supported by the evidence, and, if so supported, they are conclusive. At the same time, however, the Supreme Court pointed out that the statute granted jurisdiction to the courts to make and enter "upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside the order," and stated that the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. The court concluded:

If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act.

In *Federal Trade Commission v. Sinclair Co.*, 261 U. S. 463, at 476, referring to the Clayton Act, the court pointed out that the purpose of the statute was "to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain," and it has been held that the purpose of the Clayton Act is to prevent at incipiency forms of combination which the Sherman Law might not reach until the evil existed. *Standard Oil Co. v. Federal Trade Commission*, 282 Fed. 87 (CCA 3). Therefore, if the acquisition of the stock which in turn brought to the petitioner the business of each company, is not of sufficient moment from the standpoint of the public interest to warrant the conclusion that it substantially lessened competition, such acquisition would not be violative of the prohibition of section 7 of the Clayton Act. There can be no monopolistic tendency in acquiring control of properties which added 4 million dollars to the petitioner's already 3 millions

volume of business, when the total of the country's similar business, amounting to at least 125 millions, is considered. In *Standard Oil Co. v. Federal Trade Commission*, the Circuit Court of Appeals for the Third Circuit said:

Therefore in determining whether given acts amount to unfair methods of competition within the meaning of the Federal Trade Commission Act, or substantially lessen competition and tend to create a monopoly within the meaning of the Clayton Act, the only standard of legality with which we are acquainted is the standard established by the Sherman Act in the words "restraint of trade, or commerce" and "monopolize, or attempt to monopolize," and by the courts in construing the Sherman Act with reference to acts "which operate to the prejudice of the public interest by unduly restricting competition or unduly obstructing the due course of trade," and "restrict the common liberty to engage therein."

We have referred to the figures as to net sales. In addition, it appears that there are from 300 to 500 different perfumery and cosmetic manufacturers throughout the United States, 3,000 face powder manufacturers, each claiming individual odors and most of them having their own trade names. Indeed, the products of the corporations which the petitioner now controls through stock ownership, as well as its own products, are sold under trade names.

Unless there be a monopoly or tendency toward monopoly, we would not be warranted in concluding that the public had an interest as referred to in the statute. There is no evidence of increase in price brought about through the ownership of the stock or supervision of the companies, nor is there evidence of elimination of any of the lines of production, or curtailment of the same, nor evidence of divisions of territory. The effect seems to have been to increase the sales of the products of the three companies. The country at large was more thoroughly canvassed, and effort was made to sell the articles as branded by each company. Each company [276] has its separate sales force with men who handle their respective lines to the exclusion of others. There has been no increase in the cost of distribution nor enhancement of price, and we think that no injury has resulted to the public. This method of selling has been found unobjectionable and not injurious to competition. *Temple Coal Co. v. Federal Trade Commission*, 51 F. (2d) 656 (CCA 3).

It appears that in 1925, out of a total of \$3,482,000 it was found that two-thirds of its business consisted of talcum powders and \$61,000 in compacts, whereas the Smith company business was \$786,000 in compacts and \$480,000 in extracts, and apparently it was the desire of the petitioner to obtain the Smith company's greater volume of business in these respective articles. An officer of the petitioner explained that "upon coming into control of the Vivaudou company we found ourselves with a condition where most of our business was done on one item, Mavis talcum. Our extract business,

our compact business and our cream business was very, very small. Try as we would we could not increase it very much. We therefore purchased the Djer-Kiss line, because in the Djer-Kiss line its main strength lay in the extracts and compacts which we were lacking." And in explaining the reason for the purchase of the Melba line, he stated, "Upon acquiring control of Djer-Kiss we found ourselves with strong talcum and sundries, extracts, compacts. Our cream end of the business was very weak." The Melba strength lay in its creams. "We therefore purchased the Melba company to completely round out the entire picture." The Melba cream business was about 75 per cent of the total business of all the companies. It is properly claimed that in view of this division of the toilet article business, the competition between these companies was not substantial and the acquisition did not substantially lessen competition in view of the respective volumes of sales. Moreover, the testimony justifies the claim that the customer purchased under the trade name, indicating her preference by that name. As said in *International Shoe Co. case*, supra, "the existence of competition is a fact disclosed by observation rather than by the processes of logic; and when these officers, skilled in the business which they have carried on, assert that there was no real competition in respect of the particular product, their testimony is to be weighed like that in respect of other matters of fact. And since there is no testimony to the contrary and no reason appears for doubting the accuracy of observation or credibility of the witnesses, their statements should be accepted."

In the case at bar, there are distinctive odors, formulae, and trade-marks as testified to. The formulae create the odor and the odor is attached to the trade-mark. These factors are involved in the competition which existed before the purchase of the stock and necessarily are involved in the subsequent competition during the period of ownership of the stock of the other corporations by the petitioner. Yet there is a lack of competitive quality and quantity in the lines of articles produced by the petitioner, Smith company and the Parfumerie Melba, Inc. The total volume of net sales and therefore the business carried on by these companies is not substantial when it is considered that at least 125 million dollars worth of these products are annually sold.

In *Aluminum Co. v. Federal Trade Commission* (CCA) 284 Fed. 401, 407, referred to by respondent, two competitors agreed to form a second company and each participate in the stock ownership of the new company. In that case, the court said:

Prior to February 17, 1918, the Cleveland company had been engaged in competition with the Aluminum company. On that day it agreed with the Aluminum company to organize, and later there was organized, a third corporation, which was to purchase, and later did purchase, the aluminum rolling mill and also the

"aluminum rolling mill business" of the Cleveland company. This finding of the Commission is sustained by the record which includes an agreement between the two old corporations for the sale by the Cleveland company to the new corporation, not of its rolling mill alone but its accounts receivable * * *.

The court found monopoly features in this merger and said that the Aluminum company was the dominant factor in the aluminum industry and produced one-half of the pig aluminum and aluminum ingots made in the world and all that was made in the United States. "In the domestic field, one substantial competitor * * * arose before the war; but during the war it succumbed to financial difficulties and its properties were purchased by the Aluminum company." Moreover, it was found that the Aluminum company and its subsidiaries produced one-half of the sheet aluminum made in the world and, prior to the war, produced all the sheet aluminum made in the United States. In the instant case, there is no such proof of public [277] interest adversely affected by reason of either the purchase of the Melba Manufacturing Co. in the manner described or of the stock of the Smith company, nor was there a substantial lessening of competition.

Order reversed.

CONSOLIDATED BOOK PUBLISHERS, INC., v. FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Seventh Circuit. November 25, 1931)

No. 4423

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Cease and desist order of Federal Trade Commission in respect to method of distributing set of books in interstate commerce *held* warranted.

Publisher in attempt to sell set of books known as "New World Wide Cyclopedia" sent out lead letter fairly construed as offering a free set to certain influential persons as advertising medium, and in response to answers sent sales agent who displayed contract which the inquirer was required to sign before receiving books, providing for certain payments and for extension service without disclosing that an additional amount would be required to be paid in order to secure extension service as evidenced by coupons mailed to subscriber, which were to be signed and returned by him at certain designated periods, with remittance.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

False and misleading representations resulting in deception of public are matters of public interest which Federal Trade Commission has power to prevent.

¹ Reported in 53 F. (2d) 942. Rehearing denied December 31, 1931.

For case before Commission, see 14 F. T. C. 13, and, for supplemental findings, this volume at p. 292.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission's jurisdiction embraces false and fraudulent advertising, misbranding, and other practices which result in deceiving public.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (2).

Sale at same time of encyclopedia under two different names is unfair method of competition which Federal Trade Commission may prevent.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Practices opposed to good morals because characterized by deception, bad faith, fraud, and oppression are unfair methods of competition.

ON PETITION FOR REHEARING

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Injury as result of unfair method of competition, to warrant interference by Federal Trade Commission, need not be expressed in specific terms of money.

(The syllabus is taken from 53 F. (2d) 942)

Petition to set aside order of Federal Trade Commission. Order affirmed.

Raymond P. Fischer, Herman A. Fischer, John G. Campbell, Carlton L. Fischer, Edward W. Everett, Winston, Strawn & Shaw, and Campbell, Clithero & Fischer, all of Chicago, Ill., for petitioner.

Robert E. Healy, chief counsel, Federal Trade Commission, *Martin A. Morrison*, and *G. Edwin Rowland*, all of Washington, D. C., for respondent.

Before EVANS and SPARKS, Circuit Judges, and WILKERSON, District Judge.

SPARKS, *Circuit Judge*:

This is an original proceeding by petitioner in which it seeks to have this court review a proceeding brought by the Federal Trade Commission against it under the act creating the Commission, approved September 26, 1914 (38 Stat. 717, title 15, sec. 41, USC), resulting in an order,² issued against petitioner May 6, 1930, to cease and desist from certain acts.

² *It is now ordered*, That the respondent, Consolidated Book Publishers, Inc., its officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Selling or offering for sale, either at wholesale or retail, any set of books of the same text and content material under more than one name or title at the same time.

(2) Advertising or representing in any manner to purchasers or prospective purchasers that any book or set of books offered for sale and sold by it will be given free of cost to said purchaser or prospective purchaser when such is not the fact.

(3) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by it has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose when such is not the fact.

(4) Advertising or representing in any manner that purchasers or prospective purchasers of its encyclopedia are only buying or paying for loose-leaf supplements intended to keep the set of books up-to-date, or that purchasers or prospective purchasers are only buying or paying for services to be rendered by a research, or other bureau, for a period of ten years, when such is not the fact.

[943] The evidence shows that petitioner was, at the time of the hearing before the Commission, and previously thereto had been, engaged in distributing a set of books under the title "New World Wide Cyclopedia" in interstate commerce in competition with others similarly engaged. In the course of its business it sent what it called a "lead letter" to persons whose names appeared on selected mailing lists, seeking to interest them in the set of books mentioned. It sent salesmen to call upon prospects who returned the postal card which was inclosed in such letter.

Petitioner published a set of books (with subject matter substantially identical to the set known as New World Wide Cyclopedia) under the name of Times Encyclopedia and Gazetteer, which is sold at wholesale to Times Sale Co. for \$4.50 a set, which company disposed of the books at retail to the public in the same manner and by the same methods as employed by petitioner in the disposition of the New World Wide Cyclopedia, and in so doing it used the same advertisements as those used by petitioner, except as to name of company and title of publication. This advertising matter was printed and furnished to Times Sale Co. by petitioner, and the Times Sale Co. paid one-half of the net expense in producing and printing the loose-leaf extension service.

Petitioner used the term "World Wide Educational Service" upon its letterheads in order to conceal the fact that it was engaged in the bookselling business, and to eliminate sales resistance. The

(5) Selling the text and content material of any set of books in such a way or manner, and with the purpose and intent, that said text and content material may be resold by any other person, firm or corporation under any other name or title than that being used by respondent for said text and content material.

(6) Advertising or representing in any manner that it maintains a Research Bureau employing a staff or competent editors and experts for the purpose of answering inquiries from subscribers, when such is not the fact.

(7) Advertising or representing in any manner the inquiries addressed to its Research Bureau are referred to and answered by experts and specialists in the particular subject inquired about, unless such inquiries are actually referred to and answered by said experts and specialists.

(8) Advertising or representing in any manner that its set of books is a new and up-to-date encyclopedia, when such is not the fact.

• WORLD WIDE EDUCATIONAL SERVICE

537 South Dearborn St., Chicago

DEAR SIR: Without cost to you and without any obligation on your part, we are holding a complete 8-volume set of the World Wide Cyclopedia.

A few of these sets are being distributed as an advertising feature to obtain an original owners list in certain communities. Because of the standing you enjoy in your community we feel your name would be of special value to us as a local reference.

Should your opinion be asked at some future time, we request only that you speak of the work as you find it and say what you conscientiously think of its merits. A most attractive feature is the Loose-Leaf Extension Service, which keeps the work constantly up-to-date.

It is necessary for you to initial and return the inclosed card, confirming the correctness of address (or make corrections) and we will see to it that you are supplied with complete details without cost or obligation.

Please treat the foregoing as personal and confidential.

contract ⁴ which the inquirer was required to sign before receiving the books was first submitted to the inquirer when the salesman called upon him.

After the contract was signed it was returned to petitioner, and at the time or after the books were delivered petitioner sent subscriber a certificate of membership in the Bureau of Research ⁵ which entitled subscriber to have any submitted questions answered for a period of ten years, provided petitioner deems the questions proper, and provided further that subscriber pays the postage both ways. With this certificate was also sent to subscriber forty coupons, which were necessary to be signed and returned by him, one each quarter year, in order for him to receive the loose-leaf extension service referred to in the contract; and with each coupon subscriber was required to remit to petitioner [944] the sum of 20 cents. Thus for the first time the subscriber was informed that he was required to pay \$41.20 instead of \$33.20, and that if he defaulted in any

*** CONSOLIDATED BOOK PUBLISHERS, INC.**

537 S. Dearborn Street

Chicago, Ill.

Date _____

GENTLEMEN: Please enter my order and deliver by express (charges collect):

1. One set of the New World Wide Cyclopedia, 1929 edition—8 volumes in De Luxe Art Craft binding. (Designs in colors and lettering in gold.)

2. Enroll my name as a subscriber for your quarterly pictured Loose-Leaf Extension Service for a period of ten years.

3. Supply me with binder for Loose-Leaf Extension Service.

4. Enroll my name as a member of the Research Bureau for a period of ten years.

I have to-day paid your representative \$9 and agree to pay the balance of \$24.20 as follows: \$12.20 to the expressman upon delivery of the set; \$12 thirty days from the date of this order, to be remitted to your office at the above address.

I am retaining a copy of this agreement, and have no verbal understanding with your representative other than the terms herein stated.

(Subscriber's signature.)

CONSOLIDATED BOOK PUBLISHERS, INC.

By _____

*** BUREAU OF RESEARCH**

Non-Transferable—Maintained for the benefit of subscribers of

The World Wide Pictorial Loose-Leaf Service

And the New World Wide Cyclopedia

This certifies that: _____ is a bona fide subscriber and as such is entitled to all privileges and benefits as set forth hereunder from _____.

The World Wide Bureau of Research is maintained for the benefit of subscribers in good standing only. The registered holder of this certificate is entitled to write to the Bureau of Research and receive during the period above stated special information on all subjects coming within the scope of an Encyclopedia, in the judgment of the editors.

A stamped and self-addressed envelope must accompany each inquiry and each inquiry must be written on a separate piece of paper. On each inquiry must appear the above register number, otherwise it will be rejected and returned unanswered.

CONSOLIDATED BOOK PUBLISHERS, INC.

President.

Dated at Chicago, Illinois _____ day of _____, 192____

payment he was not in good standing and hence lost the benefits, if any, of the Bureau of Research.

At the time of the hearing in this case before the Commission petitioner was mailing about 2,000 of its lead letters each month to the small towns and cities of Illinois, Nebraska, and New York, and had eight salesmen soliciting orders—though formerly at times it had as many as thirty salesmen. These salesmen were not instructed by the officials and no printed sales talks were given to them, as they were experienced salesmen.

In petitioner's advertisements many extravagant statements were made with relation to its Bureau of Research. Petitioner agreed to furnish accurate information on every subject through its staff of competent editors; all expert in their particular fields. This bureau in reality consisted of one old man in New York City by the name of Coumbe, whose duty it was to produce the quarterly supplements, attend to all revisions, and do all the work of the Bureau of Research, with the exception of acting on a few questions which Manager Flood might be able to answer and which did not require much research. Mr. Coumbe was employed at a salary of \$40 a week.

The evidence further shows that the plates from which the cyclopedia was printed were purchased from a publisher in New York in May, 1917, and previous to that time had been used in publishing the Peoples Encyclopedia. There had been at least two general revisions by petitioner, but as late as August, 1929, there were many glaring defects running all through the books, as testified to by Mr. Coumbe. The advertisements stated that the cyclopedia was new and up to date, and that it contained 150,000 individual titles as compared with 50,000 or 60,000 in the ordinary cyclopedia.

There were subscribers who testified that petitioner's saleswomen, when calling upon them, stated the books were to be a gift; that the \$33.20 to be paid by them was for the extension service, and that nothing was said about the extra charge of 20 cents for each quarterly extension sheet; that only a few copies were to be given in the neighborhood in consideration that the donees would recommend the books to others when asked about them. The president of petitioner testified that it was not petitioner's intention to give the books to subscribers.

The question presented to us is whether or not the facts and the law warranted the Federal Trade Commission in making the "cease and desist" order. We think the Commission acted within the scope of its authority, and was abundantly justified by the facts. A close analysis of the contract convinces us that it was drawn by experienced hands and with the obvious intention of perpetrating a fraud upon the subscribing public. A mind trained in the law might

well conclude that few rights, and less benefit, moved to the subscriber by virtue of the contract, and that under a technical construction of it no gift was intended. But the general public, not skilled in legal construction, upon reading the lead letter and contract would very naturally conclude that the books constituted a gift, and in our judgment this is what petitioner wanted them to think. This is essentially true, for if all the facts were known to the subscriber, he, if only of ordinary intelligence, in all probability would have declined the offer because the cyclopedia was neither new, up to date, nor accurate. It is quite obvious that it would not sell on its merits.

A fair construction of the lead letter is that petitioner was distributing, as an advertising medium, a few sets in each community free to certain influential people, in consideration of their acting as local references to other unpreferred subscribers; and that, on account of his standing in his community, a free set was being held by petitioner for the person receiving such letter. This view is confirmed by the fact that the letter asks the receiver of it to treat it as personal and confidential. This was quite an unnecessary statement if petitioner was in good faith, for it no doubt would have permitted any person to sign the contract. This interpretation of the letter is further confirmed by the fact that petitioner's sales agent, Mrs. Cowherd, construed it the same way. Of course petitioner contends that the agent exceeded her authority, and that it should be protected against the dishonest and unscrupulous agent; but we think the agent made no representation which was not warranted by the letter and contract. If the agent did exceed her authority, it does not come with good grace from petitioner, who instituted the fraud, to abuse and bemean the agent for continuing the fraud which petitioner had started.

The order of the Commission is supported by findings of fact, and the findings of fact are supported by substantial evidence. *Fed[945]eral Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568; *Fox Film Corp. v. Federal Trade Commission* (CCA), 296 Fed. 353; *Moir et al. v. Federal Trade Commission* (CCA), 12 F. (2d) 22.

The following propositions of law fully support the ruling:

False and misleading representations resulting in deception of the public are matters of public interest which the Commission has power to prevent. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission v. Kay* (CCA), 35 F. (2d) 160.

The Commission's jurisdiction is not limited to practices which tend to create a monopoly, but embrace false and fraudulent advertising, misbranding, and other practices which result in deceiving

the public. Such practices injure competitors who do not use them. *Federal Trade Commission v. Winsted Hosiery Co.*, *supra*; *Royal Baking Powder Co. v. Federal Trade Commission* (CCA), 281 Fed. 744; *Federal Trade Commission v. Kay*, *supra*.

The sale at the same time of a cyclopedia under two different names is an unfair method of competition, which ruling is supported in principle by *Fox Film Corp. v. Federal Trade Commission*, *supra*.

Practices opposed to good morals because characterized by deception, bad faith, fraud, and oppression are unfair methods of competition. *Federal Trade Commission v. Gratz et al.*, 253 U. S. 421.

The order of the Federal Trade Commission is affirmed.

ON PETITION FOR REHEARING

Petitioner in its petition for a rehearing has called our attention to the fact that this court has not referred to nor commented upon the additional evidence taken on respondent's motion since the argument of the cause, relative to competition with and resulting injury to other concerns engaged in the same line of business; and it further contends that this court failed to consider *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, decided after the argument in this cause.

Petitioner bases its right to a rehearing upon the following grounds: (a) The Commission has failed to show the existence of competition between petitioner and the traders who it claims were injured; (b) competitors were not injured by any acts of petitioner; (c) competitors used methods the same as, or substantially similar to, those employed by petitioner.

These matters were fully presented to this court and argued prior to the taking of additional testimony as referred to above; and the pendency of the Raladam case in the Supreme Court was also called to our attention. When that case was decided by the Supreme Court and the opinion was published it was considered by this court. Subsequently, when respondent asked permission to take additional testimony, as above referred to, a part of the membership of this court thought that the evidence then in the record was sufficient to support the finding of the Commission to the effect that there was competition and resulting injury; and also that the Raladam case was not controlling in the instant case because the facts of that case showed neither competition nor injury. Out of abundance of precaution, however, the court permitted the additional evidence to be taken, after which the Commission found the existence of both competition and resulting injury to such competitors. It may be also stated that petitioner, in its answer to respondent's original

complaint, admitted that it was in competition with various other persons, partnerships, and corporations similarly engaged.

From a perusal of all the evidence, including the additional testimony given, it is quite apparent that the Commission's findings are supported by material and competent evidence with respect to competition and resulting injury to competitors. It is true the injury shown is not expressed in specific terms of money, but this we do not regard as necessary. The statement of petitioner that the competitors are guilty of the same or similar methods as those charged to petitioner is not supported by the evidence.

The petition for rehearing is overruled.

APPENDIX

FEDERAL TRADE COMMISSION ACT
CLAYTON ACT
EXPORT TRADE ACT
SHERMAN ANTITRUST ACT
RULES OF PRACTICE



FEDERAL TRADE COMMISSION ACT¹

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H. R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION. (38 Stat. 717; 15 USCA., sec. 41.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

Term, seven years.

¹ Reported decisions of the courts for the period covered by this volume (Mar. 24, 1931, to Dec. 23, 1931, inclusive) and arising under this act are printed in full at p. 597 et seq.) Previously reported decisions will be found set forth in Appendix II of Volumes II-XIV, inclusive, of the Commission's Reports. Decisions handed down prior to Jan. 1, 1930, may also be found compiled and indexed in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914-1929."

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Chairman to be chosen by commission. Pursuit other business prohibited. Removal by President.

shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES. (38 Stat. 718; 15 USCA, sec. 42.)

Commissioner's salary, \$10,000.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, \$5,000.

Other employees. Salaries fixed by Commission.

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 18, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849; 9068; 14925-14933 (part 15); Dickinson for, part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11186-11189 (part 11); 11232-11237, 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 12220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13105, 13299-13301; Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389, 11447-11458 (part 12), 11628-11639, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14769-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); Lipplit against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for,

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Commission may rent suitable offices.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Auditing of accounts.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES. (38 Stat. 718; 15 USCA, sec. 43.)

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pend-

Bureau of Corporations absorbed by Commission.

9930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14787-14791 (part 15); Robinson for, 11107 (part 11), 11228-11232; Saulsbury for, 11185, 11591-11594 (part 2); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 12080-12086, 13055-13056, 13109-13111; Thomas against, 11181-11185 (part 11), 11598-11600 (part 12), 12862-12869 (part 13), 12978-12980; Townsend against, 11870-11872 (part 12); and Walsh for, 13052-13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63 Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 429-442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570-579, and in "Statutes and Decisions," etc., 69, 74-81.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.—Contd.

ing investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employ-
ees, records, pa-
pers, property,
appropriations
transferred to
Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in
Washington, but
Commission may
meet elsewhere.

May prosecute
any inquiry any-
where in United
States.

[719] The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. DEFINITIONS. (38 Stat. 719; 15 USCA, sec. 44.)

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation."

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” means all documents, papers, and correspondence in existence at and after the passage of this Act. “Documentary evidence.”

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. “Acts to regulate commerce.”

“Antitrust acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety;² also the sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’ ” approved February twelfth, nineteen hundred and thirteen. “Antitrust acts.”

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE. (38 Stat. 719; 15 USCA, sec. 45.)

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Commission to prevent. Banks and common carriers excepted.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon Commission to issue complaint when unfair method used and to public interest.

To serve same on respondent with notice of hearing.

¹ For text of Sherman Act, see p. 686.

² Jurisdiction of Commission under this section limited by sec. 406 of the “Packers and Stockyards Act, 1921,” approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See third paragraph of footnote on p. 647.

Provisions against unfair methods of competition extended by Export Trade Act (see sec. 4, p. 684) to include such methods used in export trade against competitors.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall [720] be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section two hundred and forty of the Judicial Code.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Jurisdiction of Court exclusive

Proceedings to have precedence over other cases.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every [721] way expedited. No order of the

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Liability under antitrust acts not affected.

Service of Commission's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.⁴

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. FURTHER POWERS.⁵ (38 Stat. 721; USCA, sec. 46.)

SEC. 6. That the commission shall also have power—

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

To require annual or special reports from corporations, except banks and common carriers.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special,

⁴ For text of Sherman Act, see p. 686. As enumerated in last paragraph of sec. 4 of this act, see p. 651.

⁵ Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

reports or answers in writing to specific questions, furnish-
 ing to the commission such information as it may require
 as to the organization, business, conduct, practices,
 management, and relation to other corporations, partner-
 ships, and individuals of the respective corporations
 filing such reports or answers in writing. Such reports
 and answers shall be made under oath, or otherwise, as the
 commission may prescribe, and shall be filed with the
 commission within such reasonable period as the com-
 mission may prescribe, unless additional time be granted
 in any case by the commission.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

(c) Whenever a final decree has been entered against
 any defendant corporation in any suit brought by the
 United States to prevent and restrain any violation of
 the antitrust Acts, to make investigation, upon its own
 initiative, of the manner in which the decree has been
 or is being carried out, and upon the application of the
 Attorney General it shall be its duty to make such inves-
 tigation. It shall transmit to the Attorney General a
 report embodying its findings and recommendations as a
 result of any such investigation, and the report shall be
 made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

To transmit findings and recommendations to Attorney General.

(d) Upon the direction of the President or either
 House of Congress to investigate and report the facts
 relating to any alleged violations of the antitrust Acts
 by any corporation.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(e) Upon the application of the Attorney General to
 investigate and make recommendations for the readjust-
 ment of the business of any corporation alleged to be
 violating the antitrust Acts in order that the corporation
 may thereafter maintain its organization, management,
 and conduct of business in accordance with law

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(f) To make public from time to time such portions of
 the information obtained by it hereunder, except trade
 secrets and names of customers, as it shall deem expedient
 in the public interest; and to make annual and special
 reports to the Congress and to submit therewith [722]
 recommendations for additional legislation; and to pro-
 vide for the publication of its reports and decisions in
 such form and manner as may be best adapted for public
 information and use.

To make public, as it deems expedient, portions of information obtained.

To make reports to Congress, together with recommendations for new legisla- tion.

To provide for publication of its reports and decisions.

(g) From time to time to classify corporations and to
 make rules and regulations for the purpose of carrying
 out the provisions of this Act.

To classify corporations, and make rules and regulations incidental to administration of Act.

Sec. 6 FURTHER POWERS—Continued.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY. (38 Stat. 722; 15 USCA, sec. 47.)

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS. (38 Stat. 722; 15 USCA, sec. 48.)

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT. (38 Stat. 722; 15 USCA, sec. 49.)

Commission to have access to documentary evidence and right to copy same.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require

by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

May require attendance of witnesses and production of evidence.

Subpoenas, oaths, affirmations, examination of witnesses. Reception of evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpoena. Commission may invoke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of contumacy or disobedience of subpoena, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any [723] stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Commission may order depositions at any stage.

May be taken before person designated by Commission.

Testimony to be reduced to writing, etc.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same

Witness fees same as paid for like services in United States courts.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES. (38 Stat. 723; USCA, sec. 50.)

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc.; or

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence

Willful refusal to submit documentary evidence to Commission.

of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It [724] shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE. (38 Stat. 724; 15 USCA, sec. 51.)

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Not affected by this act.

Approved, September 26, 1914.

CLAYTON ACT¹

[Approved Oct. 15, 1914]

[PUBLIC—No. 212—63D CONGRESS]

[H. R. 15657]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS. (38 Stat. 730; 15 USCA, sec. 12.)

"Antitrust laws."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;² sections seventy-three to seventy-seven, inclusive, of an Act en-

¹ Reported decisions for the period covered by volumes I-XIII, inclusive (Mar. 16 1915, to May 4, 1930, inclusive) and bearing on the provisions of this act affecting the Commission, may be found, with a few exceptions to be noted, reported in whole or in part, in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914-1929."

Decisions in which the Commission was a party and which were handed down during the period above referred to may also be found reported in their chronological order in Appendix II of the different volumes of the Commission's decisions.

Exceptions above referred to follow: *Parker v. New England Oil Corporation*, 8 F. (2d) 892, 418; *Radio Corporation of America v. United Radio & Electric Corporation et al.*, 50 F. (2d) 206; *Swift & Co. v. United States*, 276 U. S. 311, 319; *United States v. Bates Valve Bag Corporation et al.*, 39 F. (2d) 162; *Sidney Morris & Co. v. National Association of Stationers, etc.*, 40 F. (2d) 620 (C. C. A.).

Decisions handed down subsequent to aforesaid period and during period covered by this and the preceding volume, i. e., May 5, 1930, to Dec. 23, 1931, inclusive, follow: *Pittsburgh & W. Va. Ry. v. U. S.*, 281 U. S. 479, 483, 484, 488; *American Can Co. v. Ludoga*, 44 F. (2d) 763 (C. C. A.); *Radio Corporation of America v. DeForest Radio Co.*, 47 F. (2d) 606 (C. C. A.); *Carbice Corporation of America v. American Patents Development Corporation et al.*, 283 U. S. 27; *Guterman v. Penn. R. R. Co. et al.*, Mar. 31, 1931, 48 F. (2d) 851; *Radio Corp. of America v. DeForest Radio Co.*, Apr. 27, 1931, 283 U. S. 847 (denying certiorari); *U. S. Navigation Co. v. Cunard S. S. Co.*, May 18, 1931, 50 F. (2d) 83; *Peterson v. Borden Co.*, June 11, 1931, 50 F. (2d) 644; *Temple Anthracite Coal Co. v. F. T. C.*, July 9, 1931, 51 F. (2d) 656 (see also this volume, *ante*, p. 166); and *V. Vivaudou, Inc. v. F. T. C.*, Nov. 2, 1931, 54 F. (2d) 273 (see also this volume, *ante*, p. 631).

It should be noted that this law is limited to some extent by certain provisions of other acts, as follows:

SHIPPING BOARD

The so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 728, 734) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

² The Sherman Act (26 Stat. 209), which as a matter of convenience is printed here-with on pages 686-688.

titled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein means trade or com-^{"Commerce."}merce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in^{"Person" or "persons."}this Act shall be deemed to include corporations and associations existing under or authorized by the laws of

PACKERS AND STOCKYARDS ACT

The jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

TRANSPORTATION ACT

By the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisitions by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

AGRICULTURAL ASSOCIATIONS

Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *". See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1926, 44 Stat. 803.

Sec. 1. DEFINITIONS—Continued.

either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.³ (38 Stat. 730; 15 USCA, sec. 13.)

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.³ (38 Stat. 731; 15 USCA, sec. 14.)

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or re-

³ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 660, 661.

bate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED. (38 Stat. 731; 15 USCA, sec 15.)

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws⁴ may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

May sue in any United States district court, and recover threefold damages, including cost of suit.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS. (38 Stat. 731; 15 USCA, sec. 16.)

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Prima facie evidence against same defendant in private litigation.

Consent judgments or decrees excepted.

⁴ For text of Sherman Act, see pp. 658-659. As enumerated in Clayton Act, see first paragraph thereof on p. 660.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS—Continued.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE. (38 Stat. 731; 15 USCA, sec. 17.)

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.⁵ (38 Stat. 731; 15 USCA, sec. 18.)

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, and tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

⁵ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 660-631.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 633, sec. 2.)

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Purchase solely for investment excepted.

Formation of subsidiary corporations for immediate lawful business also excepted.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited

Existing rights heretofore lawfully acquired not affected.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS—Continued.

or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.⁶ (38 Stat. 732; 15 USCA, sec. 19.)

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over \$5,000,000.

How eligibility determined.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

⁶ By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 758, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent, or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 660-661.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business:⁷ *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

Not to serve more than one bank, banking association or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

Certain savings banks, land banks, and non-commercial banking institutions excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

Class A director of Federal reserve bank excepted, and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

⁷ That part of the preceding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1929, ch. 581.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTIONS OF OTHER CORPORATIONS—Continued.

Consent may be secured before applicant elected director.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.⁸

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than \$1,000,000, and elimination of competition by agreement would violate antitrust laws.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

How eligibility determined.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

⁸ The part of the section immediately preceding beginning with, "And provided further, That nothing in this Act" to this point, amendments made by act, May 15, 1916, ch. 120, act May 26, 1920, ch. 206, and Act Mar. 9, 1928, ch. 165.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY. (38 Stat. 733; 18 USCA, sec. 412.)

SEC. 9. Every president, director, officer or manager of any firm, association, or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association, or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

May prosecute in district court of United States for district where offense committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS. (38 Stat. 734; 15 USCA, sec. 20.)

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such com-

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than \$50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

mon carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Commission to report violations, and its own findings to Attorney General.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first,

nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.⁹

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS, APPEALS, SERVICE.¹⁰ (38 Stat. 734; 15 USCA, sec. 21.)

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Jurisdiction as respectively applicable, vested in

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist, etc., on respondent.

⁹ Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

¹⁰ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 660, 661.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE—Continued.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

Findings of commission or board conclusive if supported by testimony.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce therefore.

Commission or board may make new or modified findings by reason thereof.

modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Judgment and decree subject to review upon certiorari, but otherwise final.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

Petition by respondent to review order to cease and desist.

To be served on commission or board which thereupon to certify and file transcript of record in the court.

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Jurisdiction of Court of Appeals exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE—Continued.

Verified return of person serving, and return post-office receipt, proof of service.

office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS. (38 Stat. 736; 15 USCA, sec. 22.)

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

SEC. 12. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS. (38 Stat. 736; 15 USCA, sec. 23.)

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS. (38 Stat. 736; 15 USCA, sec. 24.)

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction

A misdemeanor.

therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT. (38 Stat. 736; 15 USCA, sec. 25.)

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS. (38 Stat. 737; 15 USCA, sec. 26.)

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven, and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS—Continued.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS. (38 Stat, 737; first two paragraphs are 28 USCA, sec. 381.)

No preliminary injunction without notice.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such tempo-

rary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Opposite party may move dissolution or modification on two days' notice.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 263 of Judicial Code repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 266 not affected.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.
(38 Stat. 738; 28 USCA, sec. 382.)

Sec. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Except as provided in sec. 16 of this act.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS. (38 Stat. 738; 28 USCA, sec. 383.)

Sec. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and described acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT. (38 Stat. 738; 29 USCA, sec. 52.)

Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Continued.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Acts specified in this paragraph not to be considered violations of any law of the United States.

or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT. (38 Stat. 738; 28 USCA, sec. 386.)

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of

the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL PENALTIES. (38 Stat. 738; USCA, sec. 387.)

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which

Trial may be by court, or upon demand of accused, by jury.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL, PENALTIES—Continued.

time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 23. EVIDENCE. APPEALS. (38 Stat. 739; 28 USCA, sec. 388.)

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SECTION 21 NOT AFFECTED. (38 Stat. 739; 28 USCA, sec. 389.)

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States.

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS. (38 Stat. 740; 28 USCA, sec. 390.)

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT. (37 Stat. 740; 15 USCA, sec. 27.)

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

But to be confined to clause, sentence, etc., directly involved.

Approved, October 15, 1914.

EXPORT TRADE ACT¹

[Approved Apr. 10, 1918]

[PUBLIC—No. 126—65TH CONGRESS]

[H. R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS. (40 Stat. 516; 15 USCA, sec. 61.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

"Export trade." That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

"Trade within the United States."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

¹ In this general connection, i. e., regulation and promotion of export trade, mention should perhaps be made of the so-called antidumping legislation, prohibiting, penalizing, and affording relief for systematic importation and sale of articles into the United States at prices substantially less than their actual market value or their wholesale price, as in the act specified, where done with the intent of destroying or injuring a domestic industry, preventing the establishment thereof, or of restraining or monopolizing any part of trade and commerce in the articles concerned, in the United States. Act of Sept. 8, 1916, ch. 463, sec. 801, 39 Stat. 798.

As regards cases, see reference to act in *United States v. United States Steel Corporation*, 251 U. S. 417 at 453, in *Ex Parte Lamar*, 274 Fed. 160 at 171, and in *American Export Door Corporation v. John A. Gauger Co.*, 283 Pac. 462 (Wash.), in which the court, in a suit by an Export Trade Act association against a member, to enforce the membership contract, held the contract void as a restraint of trade at the common law and violative of the State constitution, the act inoperative to regulate such intrastate matters as therein concerned, as beyond the Federal jurisdiction, and, as regards the exemptions provided by the act, from the antitrust laws, as not intended to reach such situations as disclosed by the facts of said case. Except as above noted, the Export Trade or Webb Act act does not appear to have been involved in reported cases.

That the word "Association" wherever used in this "Association." Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW. (40 Stat. 517; 15 USCA, sec. 62.)

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,² shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Association not illegal if organized for and engaged in export trade solely,

Nor agreement nor act,

If not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION. (40 Stat. 517; 15 USCA, sec. 63.)

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,³ shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

¹ For text of Sherman Act, see pp. 686-688.

² See *ante*, p. 660 et seq.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS. (40 Stat. 517; 15 USCA, sec. 64.)

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,⁴ shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION. (40 Stat. 517, 15 USCA, sec. 65.)

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

⁴See *ante*, p. 647 et seq.

the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

District attorneys to prosecute for recovery of forfeiture.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Commission given same powers as under Federal Trade Commission Act so far as applicable.

Approved, April 10, 1918.

SHERMAN ANTITRUST ACT

Sec. 1. CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL—PENALTY. (26 Stat. 209; 15 USCA, sec. 1.)

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Misdemeanor:
Penalty—Fine,
imprisonment, or
both.

Sec. 2. PERSONS MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY. (26 Stat. 209; 15 USCA, sec. 2.)

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. CONTRACTS, ETC., AFFECTING TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY. (26 Stat. 209; 15 USCA, sec. 3.)

SEC 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States

or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. ENFORCEMENT. (26 Stat. 209; 15 USCA, sec. 4.)

SEC. 4. The several circuit courts¹ of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Jurisdiction; circuit courts.

Procedure; by way of petition.

Sec. 5. ADDITIONAL PARTIES. (26 Stat. 210; 15 USCA, sec. 5.)

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 6. FORFEITURE OF PROPERTY. (26 Stat. 210; 15 USCA, sec. 6.)

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited

¹ Act of Mar. 3, 1911, c. 231, 36 Stat. 1167, abolishes the courts referred to, and confers their powers upon the district courts.

Procedure.

to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Sec. 7. SUITS—RECOVERY. (26 Stat. 210.)

Threefold damages and costs.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court¹ of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 8. "PERSON" OR "PERSONS" DEFINED. (26 Stat. 210; 15 USCA, Sec. 7.)

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

¹See footnote on p. 687.

RULES OF PRACTICE

I. SESSIONS

The principal office of the Commission at Washington, Principal office.
D. C., is open each business day from 9 a. m. to 4.30 p. m.

The Commission may meet and exercise all its powers at Commission may exercise power elsewhere.
any other place, and may, by one or more of its members,
or by such examiners as it may designate, prosecute any
inquiry necessary to its duties in any part of the United
States.

Sessions of the Commission for hearing contested pro- Hearings as ordered.
ceedings will be held as ordered by the Commission.

Sessions of the Commission for the purpose of making Sessions for orders and other business.
orders and for the transaction of other business, unless
otherwise ordered, will be held at the office of the Com-
mission at Washington, D. C., on each business day at
10.30 a. m. Three members of the Commission shall Quorum.
constitute a quorum for the transaction of business.

All orders of the Commission shall be signed by the Orders signed by secretary.
secretary.

II. COMPLAINTS

Any person, partnership, corporation, or association Who may ask complaint.
may apply to the Commission to institute a proceeding
in respect to any violation of law over which the Com-
mission has jurisdiction.

Such application shall be in writing, signed by or in Form of application.
behalf of the applicant, and shall contain a short and
simple statement of the facts constituting the alleged
violation of law and the name and address of the appli-
cant and of the party complained of.

The Commission shall investigate the matters com- Commission to investigate.
plained of in such application, and if upon investigation
the Commission shall have reason to believe that there is
a violation of law over which the Commission has juris-
diction, and if it shall appear to the Commission that a
proceeding by it in respect thereof would be to the interest
of the public, the Commission shall issue and serve upon
the party complained of a complaint stating its charges Issuance and service of complaint.
and containing a notice of a hearing upon a day and at a
place therein fixed, at least 40 days after the service of
said complaint.

III. ANSWERS

- Time allowed for answer.** (1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint), file with the Commission an answer to the
- Form of answer.** complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial.
- Failure to deny any allegation.** Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.
- If respondent desires to waive hearing,—** (2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondent:
- In cases under sec. 5 of F. T. C. Act, or secs. 2 and 3 of Clayton Act.** (a) In cases arising under section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), or under sections 2 and 3 of the act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), an order to cease and desist from the violations of law charged in the complaint;
- In cases under sec. 7 of Clayton Act; and** (b) In cases arising under section 7 of the said act of Congress approved October 15, 1914 (the Clayton Act), an order to cease and desist from the violations of law charged in the complaint and to divest itself of the stock alleged

in the complaint to be held contrary to the provisions of said section 7 of said Clayton Act;

(c) In cases arising under section 8 of the said act of Congress approved October 15, 1914 (the Clayton Act), an order to cease and desist from the violation of law charged in the complaint and to rid itself of the directors alleged in the complaint to have been chosen contrary to the provisions of said section 8 of said Clayton Act. In cases under sec. 8 of Clayton Act.

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint. Failure to answer.

(4) Three copies of answers must be furnished. All answers must be signed in ink by the respondent or by his duly authorized attorney and must show the office and post-office address of the signer. All answers must be typewritten or printed. If typewritten, they must be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they must be on paper 8 inches wide by 10½ inches long. All Number of copies, signature, etc.

IV. SERVICE

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same. Personal, or By leaving copy, or By registered mail. Return.

V. INTERVENTION

Form of application. Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Permitted by order.

Size of paper, margin, etc., used on application. Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME

In discretion of Commission. Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPOENAS

Examination ordinarily oral. Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Subpoenas for witnesses. Subpoenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpoenas for production of documentary evidence. Subpoenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witness fees and mileage. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Examination of witnesses to proceed as fast as practicable.

Notice to counsel

IX. OBJECTIONS TO EVIDENCE

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

To state grounds of objection, etc.

X. MOTIONS

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

To briefly state nature of order applied for, etc.

XI. HEARINGS ON INVESTIGATIONS

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

By single commissioner.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding the same, be public.

General counsel or assistant to conduct hearing.

XII. HEARINGS BEFORE EXAMINERS

When issue in the case is set for trial it shall be referred to a trial examiner for the taking of testimony. It shall be the duty of the trial examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time

Examiner to take testimony.

Testimony to be completed within 80 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

Time allowance for submission of tentative findings.

Commission may order.

to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown on the record, the trial examiner shall extend the time. The examiner shall, within 20 days after the receipt of the stenographic report of the testimony (unless the time be extended by the Commission on application within that period by the chief trial examiner stating reasons for the delay), make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding; the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "trial examiner's report upon the facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

The Commission may order testimony to be taken by deposition in a contested proceeding.

Depositions may be taken before any person designated by the Commission and having power to administer oaths. Before person designated, etc.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission. Application for depositions

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney. Testimony of witness.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide. Deposition to be forwarded.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days. And filed. Copy to defendant or his attorney.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and Limitations as to time.

where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE

Relevant and material matter only to be filed.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS

Filed with secretary.

Proof of service.

Number.

To contain exceptions to trial examiner's report.

Form.

Abstract of case.

Brief of argument.

Index.

Printing.

Reply brief.

Time for briefs.

All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated:

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.

The time within which briefs shall be filed is fixed as follows: For the opening brief on behalf of the Commission, 30 days from the day of the service upon the chief

counsel or trial attorney of the Commission of the trial examiner's report; for brief on behalf of respondent, 30 days after the date of service upon the respondent or his attorney of the brief on behalf of the Commission; for reply brief on behalf of the Commission, 10 days after the filing of the respondent's brief. Reply brief on behalf of respondent will not be permitted to be filed. Applications for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least 5 days before the time fixed for filing such briefs. Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission. Appearance of additional counsel in a case shall not, of itself, constitute sufficient grounds for extension of time for filing brief or for postponement of final hearing.

Briefs on behalf of the Commission may be served by delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent be not represented by attorney, at the proper post-office address. Written acknowledgment of service, or the verified return of the party making the service, shall constitute proof of personal service as hereinbefore provided, and the return post-office receipt aforesaid for said brief when registered and mailed shall constitute proof of the service of the same.

Service of Commission brief.

Oral arguments may be had only as ordered by the Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission.

Oral arguments

XVI. REPORTS SHOWING COMPLIANCE WITH ORDERS

In every case where an order is issued by the Commission for the purpose of preventing violations of law the respondent or respondents therein named shall file with the Commission, within the time specified in said order, a report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with.

Within time specified and in writing.

XVII. REOPENING PROCEEDINGS

Within 90 days
and for good
cause.

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding is issued the Commission may, at any time within 90 days after the entry of such order, for good cause shown in writing and on notice to the parties, reopen the case for such further proceedings as to the Commission may seem proper.

XVIII. ADDRESS OF THE COMMISSION

Washington,
D. C.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

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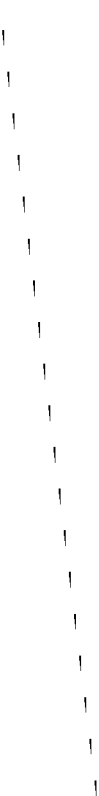
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Assuming or using misleading trade or corporate name;

Claiming and/or using indorsements or testimonials falsely or misleadingly;

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- Coercing;
- Combining or conspiring;
- Disparaging or misrepresenting competitors' products;
- Enforcing payments claimed falsely or misleadingly;
- Maintaining resale prices;
- Misbranding or mislabeling;

- Misrepresenting business status, advantages, or connections;
- Misrepresenting prices;
- Misrepresenting product;
- Naming product misleadingly;
- Offering deceptive inducements to purchase;
- Securing signature of prospect falsely or misleadingly;

- Selling below cost to hinder and/or stifle competition;
- Using lottery scheme in merchandising;
- Using lure or prize of large and eagerly sought traffic to secure unrelated competitive business;
- Using trade marks misleadingly.

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Washington Monument, using depiction of, misleadingly. *See* Misrepresenting business status, etc.

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Unfair methods of competition condemned. *See—*

Advertising falsely or misleadingly;
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 Disparaging or misrepresenting competitors or their products;
 Maintaining resale prices;
 Misbranding or mislabeling;
 Misrepresenting business status, advantages or connections;
 Misrepresenting prices;

Misrepresenting product;
 Misrepresenting unit quantities;
 Naming product misleadingly;
 Offering deceptive inducements to purchase;
 Securing agents' or prospects' names falsely or misleadingly;
 Simulating.