

# FEDERAL TRADE COMMISSION DECISIONS



**FINDINGS, ORDERS, AND STIPULATIONS**

**JULY 18, 1932, TO JUNE 18, 1933**

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**PUBLISHED BY THE COMMISSION**

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## MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF JUNE 18, 1933

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**CHARLES H. MARCH, *Chairman.***

Took oath of office February 1, 1929.

**GARLAND S. FERGUSON, Jr.**

Took oath of office November 14, 1927, and January 9, 1928.<sup>1</sup>

**WILLIAM E. HUMPHREY.**

Took oath of office February 25, 1925, and February 5, 1932.<sup>1</sup>

**ERWIN L. DAVIS.**

Took oath of office May 23, 1933.

**OTIS B. JOHNSON, *Secretary.***

Took oath of office August 7, 1922.

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During the period July 18, 1932, to June 18, 1933, there also served as commissioners—

**CHARLES W. HUNT.**

Took oath of office June 16, 1924, September 23, 1925,<sup>1</sup> and March 16, 1926.<sup>1</sup>

Term expired September 25, 1932.

**EDGAR A. McCULLOCH.**

Took oath of office February 11, 1927. Died January 23, 1933.

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<sup>1</sup> Second term.

<sup>2</sup> Recess appointment.



## ACKNOWLEDGMENT

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



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<b>ARROW-HART &amp; HEGEMAN ELECTRIC CO</b> -----	16	393
Petition for review filed in Circuit Court of Appeals for the Second Circuit on September 29, 1932. Commission's order affirmed May 29, 1933. 65 F. (2d) 336. Judgment of Court of Appeals reversed March 12, 1934. 29 U.S. 587, 54 Sup. Ct. Rep. 532.		
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# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 18, 1932, TO JUNE 18, 1933

IN THE MATTER OF

## RADIUM-ACTIVE REMEDIES 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 1885. Complaint, Dec. 12, 1930—Decision, July 18, 1932*

Where a corporation engaged in manufacture and sale of products for self-treatment of diseases and ailments,

Called its preparations radium-active remedies, and represented and advertised that same contained a radium-bearing substance and as a result of the radium-active emanations and beneficial results thereof relieved and cured many specified diseases and ailments including anemia, high blood pressure, kidney and nervous disorders, fallen arches, etc., through such statements as "SAVE YOUR HEALTH—Radium Is Restoring Health to Thousands—Get a Radium-Active Pad \* \* \*", "Radium-Active Remedies. Is still restoring health to thousands. Why not restore your health . . .";

Facts being substance in question had a radium activity of less than 232 millimicrograms of radium per gram, which does not suffice to impart a therapeutic effect to any medicament or medical appliance, and preparations in question had no therapeutic effect for various conditions and ailments for which prescribed and sold, its officers and personnel were, by and large, neither professional nor scientific, and no person connected with it had a reasonable basis either in fact or opinion for considering as true the statements and representations respecting the effect of the products in question by reason of their radium activity;

With capacity and tendency to mislead and deceive members of the public into buying and using products in question for self-medical treatment for diseases and ailments for which sold in preference to purchasers of competitors' products, and with effect of so misleading and deceiving said members, and thereby diverting trade from competitors who make and sell preparations for medical treatment without claiming that same cure diseases, etc., concerned, or are radium active or contain a radium-active ingredient or have therapeutic effects by reason of such supposed ingredient;

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. D. Lee McConaughy*, of Pittsburgh, Pa., for respondent.

Complaint

17 F.T.C.

## 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 and sale of alleged radium-active remedies for the "self-medical" treatment of anemia, heart trouble, high blood pressure and various other human ailments and afflictions,<sup>1</sup> including so-called water tubes, healing pads and other things,<sup>2</sup> and with place of business in Pittsburgh, with advertising falsely or misleading as to nature and results of product, and with misrepresenting orally through agents and employees in said respects, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, represented and represents in advertisements in newspapers and magazines, in circulars, other printed literature and verbally through officers and agents<sup>3</sup> that—

"Its said products or articles are made up of, or contain, radium bearing substances;

"Certain radio-active emanations are given out or discharged from the said products or articles due to the combined forces of the radio-active elements contained in radium, polonium and actinium"; and

Its "said products or articles when taken internally or applied to the affected part of the human body, as directed by the respondent, in the treatment of diseases, ailments, afflictions and other pathological conditions of the human body, \* \* \* discharge and have discharged their radio-active emanations into the body and cause and have caused the beneficial results" and cures and relief claimed.

The facts are, as alleged, that "the quantities of radium, polonium, and actinium, if any present in or contained in the respondent's so-

<sup>1</sup> As alleged in the complaint they include, among others, "Anemia, asthma, diabetes, dropsy, eczema, eye troubles, goiters, hay fever, hardening of the arteries, heart troubles, high blood pressure, low blood pressure, indigestion, inflammation, kidney disorders, liver trouble, nervous disorders, neuralgia, neuritis, rheumatism, sexual decline, stomach troubles, ulcers, sore feet, cold feet, and fallen arches."

<sup>2</sup> As alleged in the complaint they include, among other things, "so-called radium emanator water tubes, radium-active healing pads, goiter pads, neck pads, eye pads, and insoles and so-called radium-active ointment, tablets, suppositories, complexion soap, and greaseless cold cream."

<sup>3</sup> Advertisements to secure inquiries, in response to which respondent sends circulars and other printed literature purporting to describe its products and the results thereof through purported testimonials and otherwise are set forth in the complaint as including the following:

"SAVE YOUR HEALTH. Radium is restoring health to thousands. Get a radium-active pad. Goiter, asthma, nervousness. Pad will last life—guaranteed to be radium active. Write for free booklet. Radium-Active Remedies Co., 7 Federal St., N.S., Pittsburgh, Pa."; and

MEDICAL—RADIUM-ACTIVE REMEDIES IS STILL Restoring health to thousands. Why not restore your health? Send for booklet. 7 Federal St., Pittsburgh, Pa."

1

## Complaint

called Radium-Active Remedies are infinitesimal and are so infinitesimal that the radioactivity or radioactive emanations, if any, given out or discharged thereby from respondent's said products or articles, cannot reasonably be represented to be the cause of or to have caused or to have effected the results attributed to the use of respondent's so-called remedies by the statements and representations caused to be made by respondent."

No person connected with respondent, in the sale of its alleged remedies, as alleged, "is a medical doctor or a person learned or experienced in the medical treatment of diseases, ailments, afflictions, and pathological conditions of the human body," or "is, or was, competent or qualified by study of drugs or by experience in the use and effects of drugs and medicines, radium, polonium and actinium, in the treatment of diseases, and in the diagnosis and prognosis of disease and pathological conditions, or otherwise, to make the statements and representations to the public, \* \* \* mentioned and referred \* \* \* concerning the respondent's alleged Radium-Active Remedies and the effects of their medical use or application by members of the public, with reasonable grounds for belief in the truth of said statements and representations either as matters of fact or of opinion; or with any reasonable grounds for belief that the effects or results of the use of said so-called remedies have been derived from or occasioned by the alleged radium bearing substances in said remedies or the alleged radioactive emanations, if any, therefrom; or with any reasonable grounds for belief that said effects or results, including such results, as, that the said alleged Radium-Active Insoles are 'A sure relief for cold feet' and that 'Skin calluses may be relieved' by the use of respondent's alleged Radium-Active Ointment, may even be reasonably inferred to have been derived from or occasioned by the alleged radium bearing substances in said alleged remedies," and complaint charges that the statements and representations in question "concerning the result and effect of the use of said products, were known by the respondent through its said officers and agents at the time when made to have no reasonable foundation or basis that they were true."

Such representations and statements made by respondent, its officers and agents, as alleged, "were made and are still being made by them to the members of the public, who purchased and are purchasing respondent's so-called remedies, with the knowledge on the part of respondent's said officers and agents, at the time of said statements and representations; that—

"The said members of the public would believe and that they did believe that respondent's officers and agents had reasonable grounds to make said representations and statements by reason of

learning on the part of said officers and agents, from study and experience in the medical treatment of diseases, ailments, afflictions and pathological conditions of the human body and in the use and effect of drugs and medicines, radium, polonium and actinium in the treatment of said diseases, ailments, afflictions and pathological conditions; and \* \* \* that in consequence of said belief on the part of said members of the public.

"The said members of the public would further believe and did further believe that the use of respondent's so-called Radium-Active Remedies in the treatment of the diseases, ailments, afflictions and pathological conditions mentioned and referred to \* \* \* caused the effects and results above mentioned and referred to, represented and stated by respondent and its said officers and agents, as aforesaid."

In consequence of the foregoing, as charged, the respondent "was enabled to sell and did sell its so-called Radium-Active Remedies to the aforesaid members of the public at unusual, unreasonable, and exorbitant prices in interstate commerce,"<sup>4</sup> which various prices represented "to respondent an exorbitant profit of several hundred percent over the cost of production" and which prices and profit respondent was enabled to obtain "for its said so-called Remedies on the basis of the statements and representations made by it through its said officers and agents without any reasonable ground that said statements and representations were true or that they had any reasonable basis either as statements of fact or as statements of opinion, as above set forth."

"The statements and representations concerning its so-called radium-active remedies made by respondent through its said officers and agents," as alleged, "had the tendency and capacity" to—

"Deceive members of the public into the belief that the respondent through its officers and agents was reasonably qualified in, the respects above mentioned and referred to, to make the statements and representations made by the respondent concerning its so-called Radium-Active Remedies as set forth above;"

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<sup>4</sup>As set forth in the complaint, for illustration, "respondent's so-called Radium-Active Complexion Soap is a soap made with coconut oil as to its fatty ingredient and such toilet soap without the addition to its composition of respondent's alleged radium-active material, in the size of respondent's said soap, is usually and regularly sold at from 5 to 10 cents per bar, 3 bars for 25 cents. The addition of the respondent's so-called Radium Compound to the composition of its said soap caused, if any, only a nominal increase in the cost of its product, and the respondent sold its said soap at the price of 35 cents a bar, \$1 a box—3 bars. The respondent sold its so-called Radium-A Emanating Water Tube at the price of \$50, which price represented a profit to respondent on the cost of production of said tube of several hundred percent. Its so-called Radium-Active Insoles respondent sold for \$2 a pair and its so-called Radium-Active Health Pads it sold at from \$10 to \$15."

“Cause the members of the public to believe that the said statements and representations were made by respondent through said officers and agents with reasonable grounds for belief on the part of the respondent and its said officers and agents in the truth of the same and that the respondent and its said officers and agents had reasonable grounds to represent that the use of respondent’s so-called Remedies produced the effects or results which were set forth in or were reasonably to be inferred from the said statements and representations of the respondent;” and

“Cause members of the public in reliance in their belief as above set forth to purchase and use the so-called remedies of the respondent, instead of remedies of competitors of respondent, for the treatment of the diseases, ailments, afflictions and pathological conditions of the human body”; all to the injury and 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Radium-Active Remedies Co., 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 had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on regularly for final hearing 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 its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Radium-Active Remedies Co., is a corporation organized March 17, 1928, under the laws of the State of Delaware, having its place of business at No. 7 Federal Street, Pittsburgh, Pa.

PAR. 2. The respondent is and has been continuously, since its organization, engaged in the manufacture and sale of products which are sold by it for the self-treatment of disease, ailments, afflictions or pathological conditions of the human body.

PAR. 3. The respondent during all the times above mentioned and referred to has sold and still sells its products to members of the public, besides to those residing in Pennsylvania, in States other than Pennsylvania, for use in self-medical treatment as directed and advised by the respondent, of disease, ailments, afflictions and pathological conditions of the human body, among others, for the self-medical treatment of anemia, asthma, diabetes, dropsy, eczema, eye troubles, high blood pressure, low blood pressure, indigestion, inflammation, kidney disorders, liver trouble, nervous disorders, neuralgia, neuritis, rheumatism, sexual decline, stomach troubles, ulcers, sore feet, cold feet, and fallen arches.

PAR. 4. During the times above mentioned and referred to the respondent has caused its products when sold by it to members of the public, referred to in paragraph 3 hereof, to be transported in interstate commerce from its place of business in Pittsburgh, Pa., to, into and through States other than Pennsylvania to the said members of the public, the purchasers of the products.

PAR. 5. During the times above mentioned other individuals, firms and corporations, hereinafter referred to as "Sellers" located in the various States of the United States, have been engaged in the manufacture and in the sale of various products, which they have sold during said times to dealers who have resold them to members of the public for the self-medical treatment of disease, ailments, afflictions and pathological conditions of the human body, including those diseases, ailments, afflictions and pathological conditions mentioned and referred to in paragraph 3 hereof and during said times they have caused their products, when sold by them to be transported in interstate commerce to, into and through States, respectively, other than the State of the seller or the State of origin of the shipment of the products to the said dealers who have resold them to the members of the public, the purchasers and users thereof.

PAR. 6. The respondent during the time above mentioned was and still is in competition in interstate commerce in the sale of its products with individuals, firms and corporations mentioned and referred to in paragraph 5 hereof.

PAR. 7. One W. W. Riley, a plumber by trade, was respondent's treasurer from its organization until January, 1929, and its president from its organization until he died in 1930.

One Frank J. Coleman, a plumber by trade, was respondent's secretary from its organization until January, 1929, and respondent's vice president from its organization until the death of W. W. Riley, above mentioned, when he became respondent's president. which office he has since held and now holds.



One E. A. Zartman has been respondent's treasurer and manager from January 8, 1929, until the present time. He is employed as a teacher in a high school.

One George Heaton, a chiropractor, was respondent's secretary from January, 1929 to 1930. His duties from the time of his connection with the respondent to the present time are and have been to do whatever chiropractic adjustments are recommended by respondent's medical assistant or adviser for respondent's customers.

One David Huttinger, whose only occupation has been in connection with an automobile tire business, has been a director of the respondent since 1929 and its vice president since 1931. He has performed no duties in connection with respondent's business except his official duties as vice president and director.

One Charles G. Haag, Jr., who is 26 years old and who has been a ticket clerk for the Pennsylvania Railroad Co. for eight years, became a director of the respondent in 1930 and still is one of the directors.

One George Gerlach is respondent's secretary, succeeding its former secretary, George Heaton, above mentioned, in 1930. Said Gerlach is 22 years of age and is employed, off and on, by the Crucible Steel Co. He received his instruction in chemistry as taught in a high school in Pittsburgh.

One Henry Schmidtchen is a director of the respondent and has been employed by respondent from the beginning of its business to the present time as a general helper or general utility man at \$10 per week salary. The foregoing individuals constitute the officers and directors of the respondent from the time of its organization to the present time.

PAR. 8. None of the persons mentioned in paragraph 7 hereof has ever been a licensed practitioner in medicine in Pennsylvania, or in any other State or country and none of them has ever pursued as a student any course taught by any recognized college, school or institution of learning in any branch of chemistry or medicine, or has ever been a student of drugs and medicine or their therapeutic effects as remedies for human ailments.

The said George Gerlach is the sole person connected with respondent, who has more than an ordinary layman's knowledge of chemistry. He does not prepare the formulas for respondent's products. His duties are principally to put respondent's pills in pill boxes and solutions into bottles. He puts respondent's product called Stomach Relievers into envelopes containing one dose, but does not know the ingredients of which said product is composed. He does not know the composition of respondent's products.

PAR. 9. The only other persons who are or have been connected with respondent's organization in any way from the time of its organization to the present time, besides those above mentioned are, one Hilda M. Reed, who is 19 years of age, a graduate of high school and who is employed as a bookkeeper and corresponding secretary and office assistant by the respondent at a weekly salary of \$15, and another person who is a licensed physician and surgeon of Allegheny County, Pa., and who is respondent's medical adviser or assistant.

The said Hilda Reed has never been enrolled as a student in any medical school or college nor in any school or institution of learning where the subject of drugs and medicines and their therapeutic effects as remedies for human ailments has been taught. She has substantially no competent knowledge of drugs and medicines and their therapeutic effects when used in medicine in the treatment of human diseases. She is not a graduate chemist but has studied chemistry as taught in a high school, and also, more or less under self-instruction. She has never been engaged in any other employment since her graduation from high school except her employment with the respondent.

PAR. 10. The medical adviser or assistant of the respondent above referred to does not know and has not known how to measure the radium-active substance which the respondent includes among the ingredients of its products above mentioned and does not know the name or identity of the radium-active substance that was used as an ingredient in respondent's products, and with which he claims to have experimented.

Respondent's said medical adviser or assistant does not know the ingredients of the products of the respondent which he has been prescribing to correspondents or customers of the respondent for their use and causing them to use as medicine for relief from various ailments.

Among other remedies which the respondent's said medical assistant has been prescribing for use by respondent's said customers and which the said customers have used is the product called Stomach Relievers. As to this product of the respondent its medical assistant testified that he did not know the difference between its composition and the composition of what are known as seidlitz powders, saying that "it is ridiculous to expect him to know what is in it."

The ingredients of respondent's Stomach Relievers actually are as follows: Tartaric acid, rochelle salts, bicarbonate of soda and 5 ounces of respondent's so-called Solution No. 4 to 40 pounds of the mixture of ingredients composing the Stomach Relievers.

Respondent's medical assistant testified that he did not know the composition of the base of a paste which was used in the manufacture of respondent's insoles, but testified that it has cured fallen arches. He also testified that he did not know the location of the metatarsal arches in the human body; that it made no difference not to be able to locate the metatarsal arches so long as you are curing them.

PAR. 11. The respondent, at all times since its organization, has called its remedies radium-active remedies and at all times since its organization has represented and claimed in advertisements, in circulars and other printed literature which it has caused to be published and circulated among the public in newspapers in Pennsylvania and in States other than Pennsylvania, and verbally through its officers and agents that its products were made containing radium bearing substance from which certain radium-active emanations were given out or discharged and that respondent's products when taken internally or applied to the affected part of the human body as directed by the respondent in the treatment of disease, ailments, afflictions and other pathological conditions including those mentioned and referred to in paragraph 3 hereof discharge and have discharged their radium-active emanations into the human body and that they cause and have caused thereby the beneficial results claimed by respondent, including the relief and cure of certain of the said diseases or ailments.

PAR. 12. Among the advertisements which respondent caused to be placed in newspapers and advertisements circulated among the public throughout the several States of the United States were the following:

SAVE YOUR HEALTH. Radium is restoring health to thousands. Get a Radium-Active Pad. Colter, asthma, nervousness. Pad will last life—guaranteed to be Radium-active. Write for free booklet. Radium-Active Remedies Co., 7 Federal St., N.S., Pittsburgh, Pa., and

MEDICAL Radium-active remedies is still restoring health to thousands. Why not restore your health. Send for booklet. 7 Federal St., Pittsburgh, Pa.

PAR. 13. The respondent claims and has claimed in advertisements and verbally through its officers and agents including its said medical assistant and adviser, that its remedies relieve and cure the various diseases for which they were recommended by reason of the radium-active ingredient in their composition.

PAR. 14. The substance used as an ingredient in respondent's products which was claimed to be radium-active had a radium-activity of less than 2.32 millimicrograms of radium per gram. There is no therapeutic effect derived from the use of any medicament or medical appliance prescribed or used for the relief of disease or human ail-

ments which has a radium-activity of 2.32 millimicrograms of radium per gram.

PAR. 15. There is and has been no therapeutic effect from the use of the respondent's products by any of the purchasers or users of them in the treatment of the diseases, ailments, afflictions and pathological conditions of the human body mentioned and referred to in paragraph 3 hereof by reason of their radium-activity or of the radium-activity of any ingredient used in their composition, and no person connected with the respondent or with the sale or prescribing of any of its products had reasonable basis either of fact or opinion that the statements and representations, aforesaid of the respondent, or its agents were true regarding the effect of the said products by reason of their radium-activity.

PAR. 16. There are among the competitors of the respondent many who manufacture and sell products used for the medical treatment of diseases, ailments, afflictions or pathological conditions of the human body and who do not advertise or claim that their products cure diseases, ailments, afflictions or pathological conditions of the human body and who do not claim that their products are radium-active or that there is any radium-active ingredient used in their composition or that there is any therapeutic [benefit] derived from their said products in the medical treatment of diseases, ailments, afflictions or pathological conditions of the human body by reason of their radium-activity.

PAR. 17. The representations of respondent mentioned and referred to above to members of the public, purchasers and users of its products, to the effect that the products were radium-active and thereby had relieved and cured the diseases, ailments, afflictions or pathological conditions of the human body mentioned and referred to by respondent, had the tendency and capacity to mislead and deceive the members of the public to whom the said representations were made by respondent and they did mislead them into buying and using respondent's products for their self-medical treatment for the said diseases, ailments, afflictions and pathological conditions in preference to buying the products of respondent's competitors for that purpose and by reason thereof trade was diverted from respondent's competitors.

#### 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

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## Order

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 up the complaint of the Commission, the answer of the respondent filed herein, upon the testimony and evidence and upon the brief by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of "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, Radium-Active Remedies Co., its officers, agents, and representatives, do—

Cease and desist from representing directly or indirectly in the sale of its products in interstate commerce (1) that its products, or any of them cure any diseases, ailments, afflictions or pathological conditions of the human body; (2) that its products or any of them, which it offers to sell or sells for the treatment of human diseases or ailments are radio or radium-active, unless and until its said products have a radio or radium activity of sufficient measure or quantity to give or add to its products a therapeutic effect when used in the treatment of diseases, ailments, afflictions or pathological conditions of the human body.

*It is further ordered,* That the respondent Radium-Active Remedies Co. shall, within 30 days after the service of this order on it, 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

L. F. CASSOFF, AN INDIVIDUAL, DOING BUSINESS  
UNDER THE NAMES AND STYLES OF CENTRAL PAINT  
& VARNISH CO., CENTRAL SHELLAC WORKS, AND  
CUMBERLAND PAINT WORKSCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1698. Complaint, Oct. 2, 1929—Order, Sept. 20, 1932*

Consent order requiring respondent, his agents, etc., in connection with sale in interstate commerce of any paint dealt in by him, to cease and desist from advertising, representing, describing, branding or labeling the same (1) with the words "Purest Paint, 50% white lead, 50% zinc"; or (2) with the phrases "100% Pure Ready Mixed Paint, Zinc, Lead, Linseed Oil", or "100% Pure Lead and Zinc"; or (3) from otherwise misrepresenting "kind, class, or proportion of the ingredients" of his paint in advertising or on labels as in said order set forth and qualified.

*Mr. Henry Miller* for the Commission.

*Mr. Meyer Kraushaar*, of New York City, and *Mr. George Schachter*, of Brooklyn, N.Y., 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 L. F. Cassoff, an individual doing business under the names and styles of Central Paint & Varnish Co., Central Shellac Works, and Cumberland Paint Works, hereinafter referred to as respondent, has been and now 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. The respondent, L. F. Cassoff, an individual, has for five years last past been engaged, under the names and styles of Central Paint & Varnish Co., Central Shellac Works, and Cumberland Paint Works, in the manufacture and sale of paints and varnishes, having his principal factory and place of business in the Borough of Brooklyn, city and State of New York. In the course of his business he has solicited in the period named and solicits, orders for his products, including those hereinafter described, through the mail by letters and circulars, and by agents, from dealers and consumers in various States other than New York, and thereby

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has secured and secures orders from, and in fulfillment thereof has sold, shipped, and delivered, and sells and ships to, dealers and consumers located outside the State of New York, his products including those hereinafter described:

PAR. 2. Among his products so sold and shipped by respondent, as stated in paragraph 1, have been paints labeled as follows:

OUTSIDE AND INSIDE—PUREST PAINT

50% White Lead—50% Zinc—Pure Linseed Oil—Pure Turpentine—Best Dryers—

and a slight amount of Magnesium Silicate

to keep the paint from settling

Among his products so sold and shipped by respondent, as stated in paragraph 1, have been paints labeled as follows:

100% Pure

WALDORF

Ready Mixed

Zinc Lead

Paint

Linseed Oil

Respondent has circulated, and circulates, through the mails and through its agents, in soliciting orders from dealers and consumers located outside the State of New York, a color chart bearing in print on the front outside, the following:

WALDORF

100% Pure

Lead and Zinc

READY MIXED

PAINT

Waldorf Paints Stand the Test

CEPACO

Manufactured by

Central Paint & Varnish Works

Brooklyn, N.Y.

PAR. 3. The best commercial paints consist of two main elements, pigments or solids, such as lead, and a vehicle or medium, such as linseed oil. The best white paints, as known to the art and the trade and public, consist of the metallic substances, zinc oxide, carbonate of zinc and lead sulphate, pigments; and turpentine and linseed oil vehicles, in varying proportions. For tints and darker colors small amounts of earthy pigments are used. In cheaper paints, various earthy, nonmetallic substitutes for the metallic ingredients, zinc and lead, are used, such as magnesium silicates, litho-

pone and chalk. Such substitutes cost much less than zinc oxide or carbonate, or lead sulphate, and are much inferior to them in quality and for withstanding weather attacks. White lead and zinc are heavy substances, not in chemical combination with the linseed oil or other vehicle of the paint, and the addition of magnesium silicate will not prevent their "settling" while standing.

PAR. 4. The labels and printed matter set out in paragraph 3 are false and misleading, and have the capacity and tendency to, and do, lead dealers and consumers of paint, located in States other than New York, to believe that the paints so labeled and described by respondent are made of and contain only the metallic substances, lead and zinc, as the solid pigment ingredients, and to purchase the products of respondent so labeled in such belief; whereas, in truth and fact, the paints so labeled and sold by respondent do not consist wholly of zinc and lead as the solid or pigment ingredients, in equal or unequal proportions, but contain other and inferior substances as substitutes therefor.

PAR. 5. Respondent, in his business, is in competition with individuals, partnerships, and corporations which sell and distribute in interstate commerce paints, the pigments or solids of which consist wholly of lead and zinc in some form, and with individuals, partnerships, and corporations which sell and distribute in interstate commerce paints which consist in part of substitutes for lead or zinc and which do not represent their paints to consist wholly as to solids or pigments of zinc or lead.

PAR. 6. Said practices of respondent in the sale and distribution of its products in the circumstances and conditions are all 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 coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon him, without a trial, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the violations of law charged in the complaint; and



the Commission having duly considered the matter and being now fully advised in the premises,

*It is ordered*, That, in connection with or in the course of the sale or distribution of paint in interstate commerce, respondent L. F. Cassoff, his agents, representatives, servants, and employees cease and desist:

(1) From directly or indirectly causing any such paint to be advertised, represented, described, branded or labeled with the words "Purest paint, 50 percent white lead, 50 percent zinc", or with words, statements, phrases, or other representations of substantially the same effect, when the pigment of such paint is not in fact composed of 50 percent lead and 50 percent zinc.

(2) From directly or indirectly causing any of said paint to be advertised, represented, described, branded or labeled with the phrases "100 percent pure ready mixed paint, zinc, lead, linseed oil" or "100 percent pure lead and zinc" or with any other words, phrases, or representations to the effect that such paint is composed in its pigment of lead and zinc, unless in each instance the pigment of such paint is in fact composed wholly of lead and zinc.

(3) From also directly or indirectly using or causing to be used any statement, representation, or assertion as to the kind, class, or proportion of the ingredients of any such paint, in advertising matter or on the labels or containers thereof, except when such respective statement, representation, or assertion is true in fact.

*It is further ordered*, That respondent L. F. Cassoff shall, within 60 days after the service upon him 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 he has complied with the order to cease and desist hereinabove set forth.

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## IN THE MATTER OF

M. HARRIS

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2027. Complaint, Apr. 13, 1932—Order, Sept. 20, 1932*

Consent order requiring respondent to desist offering and selling in interstate commerce any fountain pen or other pen branded, described, or designated as "Schafner Lifetime Pen", or "Genuine Schafner Lifetime Pen", "Schafner", or "Schafner Pen", or by any other word or words simulating, resembling, or suggesting the word "Sheaffer."

*Mr. James M. Brinson* 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 M. Harris, hereinafter called 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 M. Harris is an individual who has been, and is engaged in the business of manufacturing, or buying the parts for, and assembling, fountain pens, and of selling the pens so manufactured, or assembled, in commerce among and between the various States of the United States. His principal place of business is in the city of Philadelphia and State of Pennsylvania. It has been, and is, the practice of respondent to transport, or cause to be transported, his product, when sold, to purchasers thereof located in the various States of the United States other than the State of Pennsylvania, or in other States of the United States than the State in which he has, at various times, maintained his principal office and place of business, in competition with individuals, partnerships, and corporations engaged in the sale of fountain pens in interstate commerce.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent M. Harris has offered for sale and sold, and now offers for sale and sells, fountain pens described as "Schafner Lifetime Pens" or "Genuine Schafner Lifetime Pens", or "Schafner Pen." Such fountain pens bear upon the clip attached to their cap the brand name "Schafner."

It has been and is the practice of respondent to sell his product, the so-called "Schafner Lifetime Pens" or "Schafner Pen", to, or through, department stores, drug stores, cigar stores, and other places of business similar in character and purpose, and to furnish such direct purchasers of his product with so-called advertising mats to be used by them for advertisements in local newspapers.

Such advertisements, so furnished the direct purchasers of his product by respondent M. Harris, have contained, and contain, such language as the following:

**DISCONTINUED COLORS**  
of Genuine Schafner Lifetime Guaranteed  
\$5 Self-filling Fountain Pens  
on Sale at \$1

These pens are new and perfect. Guaranteed a lifetime. Just are discontinuing some of the colors. Has a 14-K solid gold, iridium point which cannot be bought for less than \$1.75 alone. Our supply is limited. We cannot fill any mail, telephone, or c.o.d. orders. Has the hard unbreakable barrel.

Respondent has caused to accompany his fountain pens so advertised, offered for sale and sold, a guarantee certificate, which, among other statements, contains the following:

**LIFETIME GUARANTEE**  
**GUARANTEE CERTIFICATE**

NOTICE.—Fill this pen as directed, not your way. Be sure you have the complete point in ink. Not half the point. Open lever, don't pump it and let pen stand in ink ten seconds after you close lever. If pen flows too free, refill it.

This certifies that this fountain pen is guaranteed by us to be in perfect working order and absolutely free from any defects.

In the event of any dissatisfaction at any time return this certificate with your pen and 25 cents in stamps to the address below, NOT the store where you purchased this pen, and we will adjust same or give you a new one. It is important that you send 25 cents with the pen sent for packing and postage. All repairs will be made regardless of what conditions free for a lifetime. Send to

M. Harris  
81 Pennsylvania Avenue  
Somerville, Massachusetts

At the time when the particular guarantee certificate above described was issued by respondent, his place of business was at Somerville, Mass., from which place it was then his practice to transport, or cause to be transported, his product, when sold, to purchasers in various other States of the United States than the State of Massachusetts.

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His fountain pens, which respondent has caused and causes to be represented in advertisements in the local newspapers of communities in which his direct purchasers are doing business, as having 14-K solid gold, iridium point, which cannot be bought for less than \$1.75 alone, and which are represented as \$5 pens which are sold for \$1, thereby saving \$4 to the purchaser, have been and are sold by respondent M. Harris for \$9 per dozen.

PAR. 3. The W. A. Sheaffer Pen Co. has been for many years and now is, engaged at Ft. Madison, Iowa, in the manufacture of fountain pens and pencils and their sale in the various States of the United States, causing such products, when sold, to be transported from its said place of business to purchasers in other States of the United States than the State of Iowa. Its fountain pens and pencils have been for many years last past and now are, offered for sale and sold under the designation or name "Sheaffer", and in connection therewith W. A. Sheaffer Pen Co. has, for many years last past, furnished a lifetime guarantee with certain of its products. The products of W. A. Sheaffer Pen Co. have been and are of high quality, and for many years have been widely and favorably known to the purchasing public in the United States because of their intrinsic merit and of the extensive advertising, by means of which W. A. Sheaffer Pen Co. has brought its products and their distinctive qualities to the attention of the purchasing public. The lifetime guarantee has been used by W. A. Sheaffer & Co. over such a period of time, in connection with certain of its products, and there has been such extensive advertisement of the word "lifetime" in connection with the Sheaffer pen, that the expression "lifetime" used in connection with fountain pens has come to be associated in the minds of the purchasing public with the fountain pen generally and favorably known by the designation or name "Sheaffer", so that such expression now serves to signify or suggest the product of the W. A. Sheaffer Pen Co.

PAR. 4. The brand or trade name "Schafner" used by respondent for the designation of his fountain pens closely resembles and simulates the name "Sheaffer", and his advertisement and use of the expression "lifetime guarantee" resembles and simulates the practice of W. A. Sheaffer Pen Co. described in paragraph 3, with which the purchasing public has been familiar for many years. The acts and practices of respondent M. Harris, as described in paragraph 3 hereof, have had and have, and each of them has had and has the capacity and tendency to mislead and deceive, and such acts and practices have furnished and furnish, and each of them has furnished

and furnishes, the dealer customers or distributors of respondent with the means to mislead and deceive the public into the belief that the fountain pen offered for sale and sold as "Schafner Lifetime Pen" or "Genuine Schafner Lifetime Pen" or "Schafner Pen", is the product manufactured and sold by W. A. Sheaffer Pen Co. of Ft. Madison, Iowa, generally and favorably known as the "Sheaffer Lifetime Pen" or "Sheaffer Pen", and to induce purchase of the so-called "Schafner Lifetime Pen" or "Schafner Pen" in reliance on such erroneous belief.

The aforesaid practice of respondent has had and has the capacity and tendency to divert trade, and does divert trade to respondent from the said W. A. Sheaffer Pen Co. and from other competitors of respondent, particularly those selling fountain pens in interstate commerce of the class or type of fountain pens sold by respondent.

PAR. 5. The above and foregoing 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent wherein he refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of the law alleged in the complaint.

*It is now ordered*, That respondent, M. Harris, cease and desist, directly and indirectly, from offering for sale or selling, in interstate commerce, any fountain pen or other pen branded, described, or designated as "Schafner Lifetime Pen", or "Genuine Schafner Lifetime Pen", "Schafner" or "Schafner Pen", or by any other word or words simulating, resembling, or suggesting the word "Sheaffer."

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

IN THE MATTER OF  
SOUTHERN CALIFORNIA LAUNDRY OWNERS  
ASSOCIATION ET AL.

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

*Docket 1954. Complaint, May 26, 1931—Order, Sept. 21, 1932*

Consent order requiring respondents to cease and desist from—

- (a) "Uniting or cooperating in a common course of action among themselves or among themselves and with others in a combination to prevent and restrain manufacturers of laundry machinery, equipment and supplies from freely selling and transporting their respective products or causing the same to be transported, from the various respective States of the manufacture thereof, to laundry owner customers located in California, not members of respondent associations or either of them"; and, pursuant to said combination, to cease and desist from—
- (b) "Using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce, or compel said described manufacturers or any of them to refrain from selling said described customers or any of them, or to refrain from so selling except on unfair, discriminatory or prohibitive terms and conditions fixed by respondents;
- (c) "Seeking or obtaining information of sales, proposed sales or contracts for the sale by said described manufacturers of said products to the above described customers or any of them, in the furtherance of the said described combination;
- (d) "Persuading, inducing, or compelling said described manufacturers to break or cancel their contracts for the sale of their said products to the said described customers, or any of them, and from attempting so to do; and
- (e) "Using other cooperative and coercive means to carry out or make effective their said described combination."

*Mr. Eugene W. Burr* for the Commission.

*Chapman & Chapman*, of Los Angeles, Calif., for respondents, with whom appeared *Nichols, Cooper & Hickson*, of Pomona, Calif., for respondent J. L. Cathcart, individually and as member of executive committee of Southern California Laundry Owners Association.

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 each and all the parties named in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Southern California Laundry Owners Association, is a voluntary unincorporated association of approximately one hundred individuals, partnerships, and corporations, as members, engaged in the laundry business with their respective places of business in the southern portion of the State of California, said members being banded together for the purpose of promoting their common interests and business affairs.

The officers of the respondent association are the following respondents who represent the members named:

J. F. Springer, president, Glendale Laundry, Glendale, Calif.

Gerald Beck, vice president, Softwater Laundry, Long Beach, Calif.

William Rattray, secretary, Beach Laundry, Venice, Calif.

G. A. Miller, treasurer, Troy Laundry, Los Angeles, Calif.

The following individual respondents are members of the executive committee of said association, which has charge of the conduct and management of the affairs of such association, and who are elected by the active members of the said association from their number in the various sections of the territory covered by said association:

John Morris, Home Service Co., Los Angeles, Calif.

J. A. Bryant, Highland Laundry, Los Angeles, Calif.

J. B. Leaman, American Laundry, Los Angeles, Calif.

W. L. Stevens, Crown Laundry, Los Angeles, Calif.

E. M. Goveia, California Laundry, Los Angeles, Calif.

E. Enfield, Southland Home Laundry, Los Angeles, Calif.

S. H. White, White's Laundry, Huntington Beach, Calif.

Al Davis, Balboa Laundry, San Diego, Calif.

E. S. Cochran, Redlands, Calif.

J. L. Cathcart, Southern Service Co., Pomona, Calif.

R. B. Young, Mission Laundry, Pasadena, Calif., and the four said officers of the said association, Messrs. Springer, Beck, Rattray, and Miller.

Respondents, L. F. Caswell, president of respondent Peerless Laundry Services, Inc., J. B. Leaman, president of respondent American Laundry Co., E. J. Campbell, president of respondent Blue Bird Laundry Co., and William H. White, are individuals who have been leaders in the activities of said associations, Respondents Caswell and Leaman having served as president, Respondent Campbell having served as chairman of an important committee and William H. White having served as general manager.

Respondents, Peerless Laundry Services, Ltd., American Laundry Co., Blue Bird Laundry, Troy Laundry, Community Laundry, and Glendale Laundry, are corporations with their respective offices and principal places of business located in the city of Los Angeles, State of California, except the Glendale Laundry which has its principal place of business in Glendale in said State, and all are active members of said respondent association. The number of members of said association varies from time to time by the dropping out of old members and the addition of new members, so that it is impracticable at any given time to name as parties respondent, and bring before the Commission herein, each and all of the members of said association without manifest inconvenience and delay; wherefore, the officers of said association, made respondents herein individually, and as members of said executive committee, and the respective members of the executive committee, made respondents herein individually and as members of such committee, and the corporations herein named as members of said association, are now made respondents as representing each and all the said members of said association.

Respondent, Los Angeles Laundry Owners Association, is a voluntary unincorporated local association of individuals, partnerships and corporations engaged in the laundry business with their principal place of business located in the city of Los Angeles, State of California, organized and conducted by the officers and the executive committee of said respondent, Southern California Laundry Owners Association, in order to more effectively carry out the plans and activities of said respondent, Southern California Laundry Owners Association, as more particularly hereinafter described, in the city of Los Angeles, State of California.

PAR. 2. Said respondent members, named and described in paragraph 1 hereof, purchase laundry machinery, equipment, and supplies used by them in the conduct of their business directly and immediately from manufacturers and producers thereof, located for the most part in States other than the State of California, and said manufacturers and producers ship the goods so purchased from their respective places of business in such other States, to said members in the State of California. Said respondent members in the course and conduct of their businesses are in competition with other individuals, partnerships, and corporations also engaged in the laundry business in southern California, who are not members of respondent association, and who likewise purchase laundry machinery, equipment, and supplies directly and immediately from manufacturers and producers thereof located for the most part in States other than



the State of California, and who cause the goods so purchased to be transported from the respective places of business of said manufacturers and producers in other States to said competitors located in the State of California.

PAR. 3. For about 2 years last past said respondent members have united in a common course of action and have cooperated and confederated together, and with others, under the leadership of the individual respondents named herein, and the said officers and members of the executive committee of said respondent associations, in a conspiracy to prevent said competing laundry owners mentioned in paragraph 2 hereof, from obtaining laundry machinery, equipment, and supplies, directly from the aforesaid manufacturers and producers thereof; to fix and establish uniform prices at which said members of respondent associations would perform certain laundry services for the public and to prevent said competing laundry owners from performing such services at less prices. To carry out the aforesaid conspiracy, respondent members led by the respective officers and committees of respondent associations have performed, among others, the following acts and things:

(a) Fixed and established by agreement uniform schedules of prices and rules pursuant to which said members shall perform certain laundry services for the public, and abided by, maintained and adhered to said uniform prices and rules;

(b) Held meetings for the interchange of information concerning, and the discussion and adoption of plans and measures for the carrying out of said agreement described in subparagraph (a) hereof;

(c) Notified aforesaid manufacturers and producers of laundry machinery, equipment, and supplies of said agreement described in subparagraph (a) hereof, and sought to, and did induce and procure cooperation of said manufacturers and producers in the enforcement thereof;

(d) By threats of boycott, by boycott, and other coercive methods sought to and did persuade, induce, and compel many aforesaid manufacturers and producers to sell laundry machinery, equipment, and supplies to the said members of respondent associations only, and to refrain from selling said products to other laundry owners who are not members of said associations;

(e) Sought for and ascertained information of sales, or proposed sales, by aforesaid manufacturers to aforesaid competing laundry owners not members of said associations, and thereupon by threats of boycott, by boycott, and other coercive methods sought to and did persuade and induce and compel such manufacturers to refrain

from selling and supplying products to such laundry owners in the future, except on terms and conditions fixed by said respondents, which are unfair, discriminatory, and prohibitive;

(f) Sought for and secured the names of said laundry owners not members of said associations who have entered into contracts with the aforesaid manufacturers and producers to purchase laundry machinery, equipment or supplies, and thereupon by threats of boycott, by boycott, and other coercive methods sought and did persuade, induce, and compel such manufacturers and producers to break or cancel said contracts and thereafter to refuse to carry out the same;

(g) Used other cooperative and coercive means to carry out and make effective their aforesaid conspiracy.

PAR. 4. The above alleged acts and things done by respondents named herein have tended, and still tend to, and did, and now do, close and curtail certain of the outlets, within the State of California, for the direct and immediate sale by manufacturers and producers in other States, of goods shipped by them into said State; to interfere with such interstate commerce by preventing individuals, partnerships, and corporations engaged in the laundry business in southern California who are not members of respondent associations from purchasing laundry machinery, equipment, and supplies from said manufacturers and producers located in States other than the State of California and by eliminating from said interstate commerce the manufacturers who formerly sold, and who would, but for the above alleged acts and practices of said respondents, now sell to said individuals, partnerships, and corporations engaged in the laundry business in southern California; who are not members of respondent associations, and by restricting said interstate commerce to such manufacturers who do cooperate with the said respondents as hereinbefore described, and set out, and thus to obstruct the natural flow of commerce in the channels of interstate trade; wherefore said acts and practices of respondents are all to the prejudice of the public and of the competitors of members of respondent associations, and of manufacturers and producers not cooperating with said respondents in carrying out their said conspiracy, and constitute unfair methods of competition in interstate commerce within the meaning and intent 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 May 26, 1931, issued its complaint against the respondents named in above title, 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 or about June 22, 1932, various respondents filed four certain answers to the charges of the said complaint. Subsequent thereto the Commission appointed an examiner to receive evidence in support of the said complaint and in support of the said respective answers. Thereafter on July 25, 1932, respondents jointly applied to the Commission for leave to withdraw their four said respective answers and for leave to file a joint and several, substitute answer, submitted with their said application whereby, pursuant to Rule III, subdivision (2) of the Rules of Practice of the Commission, they waived hearing on the charges set forth in the said complaint and gave their consent that the Commission make, enter and serve upon the respondent an order to cease and desist from the violations of law alleged in the said complaint.

*It is now ordered,* That the respondents above named shall cease and desist from uniting or cooperating in a common course of action among themselves or among themselves and with others in a combination to prevent and restrain manufacturers of laundry machinery, equipment, and supplies from freely selling and transporting their respective products or causing the same to be transported, from the various respective States of the manufacture thereof, to laundry-owner customers located in California, not members of respondent associations or either of them; and

*It is further ordered,* That the respondents shall cease and desist from the employment of each of the following practices, in pursuance of the combination hereinabove described, namely:

(a) From using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce or compel said described manufacturers or any of them to refrain from selling said described products to the above described customers or any of them, or to refrain from so selling except on unfair, discriminatory, or prohibitive terms and conditions fixed by respondents;

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(b) From seeking or obtaining information of sales, proposed sales or contracts for the sale by said described manufacturers of said products to the above described customers or any of them, in the furtherance of the said described combination;

(c) From persuading, inducing, or compelling said described manufacturers to break or cancel their contracts for the sale of their said products to the said described customers, or any of them, and from attempting so to do; and

(d) From using other cooperative and coercive means to carry out or make effective their said described combination; and

*It is further ordered,* That respondents within 60 days after 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 have complied with the order to cease and desist heretofore set forth.

## Complaint

IN THE MATTER OF  
JEFFREY JEWELRY COMPANY

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

*Docket 2004. Complaint, Feb. 2, 1932—Order, Sept. 21, 1932*

Consent order requiring respondent, its agents, etc., in connection with sale in interstate commerce of jewelry, not made by hand by American Indians to cease and desist representing same as so made through the words "Indian" or "Navajo", or any other words, markings or labeling, or otherwise.

*Mr. Eugene W. Burr* for the Commission.

*Mr. Frank S. Righimer*, of Chicago, Ill., 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 Jeffrey Jewelry Co., a 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, Jeffrey Jewelry Co., 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 located in the city of Chicago, in the State of Illinois. Respondent is now and for more than one year last past has been engaged in the manufacture of jewelry and in the sale and distribution of said jewelry in commerce between and among various States of the United States. Respondent causes its said products when sold to be shipped from its 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 its business, the respondent was at all times herein referred to in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. There are in the United States tribes of Indians, including especially the Navajo Indians in Arizona, who manufacture jewelry of special design designated as "Indian" or "Navajo" jewelry, which jewelry is sold to the trade and the public under such designa-

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tions in interstate commerce. The value of the jewelry manufactured and sold by said Indians is substantial and the said "Indian" or "Navajo" jewelry has acquired a reputation for beauty and wearing qualities and said Indians have a valuable goodwill in the words "Indian" and "Navajo" as applied to the same.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, respondent has been and is now soliciting the sale of and selling and distributing in interstate commerce certain jewelry described and advertised in advertisements, circulars, leaflets or brochures published or caused to be published, and issued or caused to be issued by it, and distributed or caused to be distributed to its customers and prospective customers located in various States of the United States. The descriptive matter in such advertisements, circulars, leaflets or brochures contained the representations (both by printed words and pictorial representations) that the said jewelry so offered for sale and sold by respondent is "Indian" jewelry or that the said jewelry so offered for sale and sold by respondent is "Navajo" jewelry, when in truth and in fact, the said jewelry is not manufactured by American Indians of any tribe, but is manufactured or fabricated by machinery in mills or factories.

PAR. 4. The word "Indian" or the word "Navajo" as applied to hammered silver jewelry is understood by the purchasing public to mean and designate jewelry manufactured or fabricated by hand by American Indians.

PAR. 5. The acts and things done by respondent as hereinabove set forth have the capacity and tendency to mislead and to deceive and do mislead and deceive the purchasing public into the belief that the products manufactured and offered for sale and sold by respondent as aforesaid, are products manufactured by hand by American Indians, and to induce and have induced the purchase of such jewelry in reliance on such belief; and thereby to divert trade from and otherwise injure competitors of respondent.

PAR. 6. Among the competitors of respondent are many manufacturers, dealers and distributors of jewelry who market such products under truthful representations to the purchasing and consuming public in competition with respondent and who do not use false or misleading representations of the type and character used by respondent, as hereinabove set forth.

PAR. 7. The use by respondent of the false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth, constitutes practices or methods of competition which tend to and do (a) Prejudice and injure the public, (b) Unfairly divert

## Order

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.

PAR. 8. Said false, misleading, and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful 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".

## ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing by the Federal Trade Commission upon the complaint and respondent's answer waiving all further proceeding and consenting that the Commission may make, enter, and serve upon it an order to cease and desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises,

*It is now ordered*, That the respondent, Jeffrey Jewelry Co., a corporation, its agents, representatives, servants, and employees, in connection with the sale or offering for sale in interstate commerce of jewelry, cease and desist from representing by the words "Indian", or "Navajo", or any other words, markings, or labels, independently or in connection with any other words, phrases, or markings, or by any other means, that said jewelry is manufactured by hand by American Indians when such is not the fact.

*It is further ordered*, That the respondent shall, within 60 days from 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 herein set forth.

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## IN THE MATTER OF

F. T. CARY, TRADING AS DIAMOND FUR  
INDUSTRIESCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2020. Complaint, Mar. 16, 1932—Decision, Sept. 21, 1932*

Where an individual engaged in the breeding, buying, and sale of fur-bearing rabbits, made such statements in his advertisements in newspapers and periodicals of general circulation and in letters, circulars, booklets, and other literature as "We agree to buy all the rabbits you raise from stock purchased from us or their descendants and remit promptly \* \* \* your breeding place becomes a branch of ours. We take all the risk \* \* \* Your market is already provided by us \* \* \* We guarantee to buy from you all Chinchilla rabbits you raise from our parent stock or their descendants, under the conditions, that you will find fully explained in the *market agreement and contract*, that accompanies this letter. Read it carefully. You will find it a fair, sound business proposition"; without making clear in same context that his plan, offer, agreement, and guaranty related primarily only to purchase by him of such stock as complied with registration requirements of the American Rabbit and Cavy Breeders Association, and that in accordance with his actual obligation he would pay his customers only market, and not advertised, price for stock not so complying, and that transportation costs from customer's location to his place of business would be a charge against such noncomplying stock; with capacity and tendency to mislead and deceive customers and prospective customers into believing that said individual would buy all rabbits raised from stock purchased from him at prices advertised by him for breeding stock, and to divert trade to him from competitors engaged in sale of fur-bearing rabbits, and with a substantial effect upon said competitors' competition:

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

*Mr. Eugene W. Burr* for the Commission.

*Mr. Mark F. Jones*, of Los Angeles, Calif., 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 for a time as United States Fur Farms and thereafter as Diamond Fur Industries, in the breeding and selling of fur-bearing rabbits, and with principal place of business in Inglewood, Calif., with offering deceptive inducements to purchase through nonperformance of contractual undertakings with



## Complaint

customers, 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 aforesaid, sets forth in advertisements in newspapers and periodicals of general circulation, and in letters, circulars, etc., that he guarantees to buy all the rabbits raised by the customer from stock or descendants of stock purchased by him under his market agreement and contract,<sup>1</sup> with effect of misleading and deceiving customers into purchasing fur-bearing rabbits from him in the mistaken belief thus induced and with capacity and tendency so to do.

The facts are "respondent does not carry out, has never carried out, nor did he ever intend to carry out the aforesaid representations made by him in his advertising nor the agreements and guarantees in his contracts hereinabove stated, but respondent always has refused and still refuses, in some cases, to purchase such descendants at any price and in most, if not all other cases, respondent has refused and still refuses to purchase from his customers the descendants of the fur-bearing rabbits which he sells to such customers, unless such customers sell such descendants at prices far lower than the prices respondent agrees and has agreed upon in his contracts to purchase the descendants of rabbits which he sells."

Said representations, advertisements, and contracts of respondent, as alleged, "have had and still have the capacity and tendency to divert trade to respondent from competitors and by such representations, advertisements and contracts, and respondent's refusal to purchase from his customers at the prices stated in such contracts the descendants of the fur-bearing rabbits which he sells to such customers, substantial competition throughout the various States of the

<sup>1</sup> Respondent's general proposition, above referred to and displayed in his advertising, is reduced, as alleged and quoted in the complaint, in the findings infra at page 33.

The contract, alleged and set forth by a substantially that employed by respondent in dealings with his customers, reads as follows:

"In consideration of your purchase of rabbits we enter into the following market agreement with you, the purchaser:

"(1) We agree to buy from you all stock raised from the stock you purchase from us, and stock raised from their descendants, regardless of sex, and remit promptly.

"(2) We agree to pay you the following prices for all stock purchased for breeding purposes by us from you, raised by you from stock you purchased from us, and stock raised from their descendants under the following terms and conditions:

Junior doe and buck, each weighing not less than 3½ pounds, per pair-----	\$4
Doe and buck, each weighing 5¼ to 6¼ pounds, per pair-----	5
Doe and buck, each weighing 6¼ to 7¼ pounds, per pair-----	6
Doe and buck, each weighing 7¼ pounds, per pair-----	12

"Said stock to be standard, sound, healthy, and in good condition. We pay express charges on all shipments of breeding stock from our California herd and on all shipments of senior breeding stock under this contract ordered shipped to the home office."

Complaint alleges that in other contracts prices to be paid ran from \$2 to \$7.50 a pair, according to the weight and breed.

United States has been and is injured by respondent to a substantial extent"; all to the prejudice of the public and competitors, including competitor dealers and breeders, who enter into contracts with customers for purchase at specified prices of descendants of the fur-bearing rabbits sold to such customers and purchase such descendants from customers at prices so agreed upon, and competitor dealers and breeders, who neither advertise nor enter into such contracts or make such purchases.

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 on March 16, 1932, and served a complaint upon the respondent, F. T. Cary, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent entered his appearance and filed answer to said complaint. Thereafter on July 11, 1932, a stipulation of the facts of the case was entered into between the parties, subject to the approval of the Commission, which said stipulation has been duly approved.

And thereupon this proceeding came on regularly for final hearing and the Commission having duly considered the pleadings and the said stipulation and being now 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. Respondent, F. T. Cary, is an individual trading as Diamond Fur Industries with his principal place of business at Inglewood, Calif., since March, 1930. From January 1, 1929, to March, 1930, he traded as United States Fur Farms at said named city. Respondent's business has consisted in the breeding, buying, and selling of fur-bearing rabbits. Since September, 1931, he has not sold any rabbits but has maintained his place of business for the purpose of complying with outstanding contracts made prior to said last named time. Prior to September, 1931, respondent has caused such fur-bearing rabbits when sold by him to be transported from his place of business at Inglewood, Calif., to purchasers thereof located in the State of California and to purchasers located in other States of the United States, and for more than 3 years prior to September, 1931, there was a constant current of trade and commerce by respondent in such fur-bearing rabbits between and among various States of the United States. During the said described period

respondent was in competition with other persons and with corporations and partnerships engaged in the sale of fur rabbits, between and among various States of the United States.

PAR. 2. Respondent, from January, 1929, to March, 1930, while trading as United States Fur Farms and from March, 1930, to September, 1931, while trading as Diamond Fur Industries, caused advertisements to be inserted in magazines, newspapers, and periodicals having general circulation between and among various States of the United States; and respondent also during said named periods published and circulated letters, circulars, booklets, and other literature, in order to secure purchasers for his said rabbits, in such advertisements, circulars, letters, booklets, and other literature respondent stated among other things the following:

We agree to buy all the rabbits you raise from stock purchased from us or their descendants and remit promptly.

In effect, your breeding place becomes a branch of ours. We take all the risk of selling.

See our guaranty to purchase all your rabbits.

It is a plain business proposition—you raise the rabbits—we buy all you raise.

Your market is already provided by us under our market agreement and contract.

*We guarantee to buy all the rabbits you raise.*

Don't think if you start in this business you have to find your own buyers and take a risk. We want you to raise rabbits for us. All we require is that you raise Diamond Chinchillas from our parent stock. This is to protect us in our guaranty to buyers. In order to encourage and assist you to raise rabbits for us, we make you a fair, honest, liberal, absolute guarantee.

We guarantee to buy from you all Chinchilla rabbits you raise from our parent stock or their descendants, under the conditions, that you will find fully explained in the *market agreement and contract*, that accompanies this letter. Read it carefully. You will find it a fair, sound business proposition.

We contract with you to *raise rabbits for us*. We can guarantee to buy *all you can raise* (See our guaranty and contract) for we know that the demand will not be filled for years to come.

PAR. 3. Pursuant to the investigation by the Commission in this proceeding, and after full consideration of the matter, respondent came to the conclusion, and stipulated and the Commission finds, that the aforesaid statement and other representations used by respondent had the capacity and tendency to mislead customers and prospective customers into the belief that respondent would purchase all rabbits raised from stock purchased from respondent at prices advertised by respondent for breeding stock, whereas in truth and in fact respondent was not obligated to pay said prices, or to pay express charges to his place of business for rabbits unless the stock

repurchased qualified as breeding stock under the rules of the American Rabbit and Cavy Breeders Association.

PAR. 4. The said representations by respondent during the said named periods had the capacity and tendency to divert trade to respondent from competitors engaged, as aforesaid, in selling fur-bearing rabbits. Respondent's said advertising and representations had a substantial effect upon said competitors' competition in interstate commerce.

#### CONCLUSION

The acts and practices of respondent set forth in the foregoing findings as to the facts are all to the prejudice of respondent's competitors and of the public and constitute, under the circumstances therein stated, unfair methods of competition in 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 considered by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the stipulation of facts, 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 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 F. T. Cary, his servants, agents, and employees, in connection with the buying and selling of fur-bearing rabbits in interstate commerce, cease and desist from representing by any advertisement, circular, letter, booklet, or other literature used by respondent for securing customers in his said business, as follows:

(a) That respondent agrees or guarantees to, or does or will, buy all the rabbits which respondent's customers raise from stock bought from respondent and from the descendants of said stock;

(b) That the breeding place of respondent's customer becomes in effect a branch of respondent's business;

(c) That the market for customers of respondent is afforded by respondent's agreement with the customer;

(d) That respondent agrees to or does relieve respondent's customers from all the risk of selling the rabbits raised by them; or

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(e) That respondent agrees to pay or does pay specified prices for rabbits raised by respondent's customers:

Unless and until respondent shall make it clear in the same context that respondent's plan, offer, agreement and guaranty relates primarily only to the purchase by respondent of such stock as complies with the registration requirements of the American Rabbit and Cavy Breeders Association, and that respondent will pay his customers only the market price for stock which does not comply with the said requirements, and unless and until respondent shall make it clear further that the transportation costs from the customer's location to respondent's place of business, on stock which fails to comply with the said described requirements, are a charge against said customer; so long as such is the respondent's plan, offer, contract and guaranty.

*It is further ordered,* That respondent, within 30 days after 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 has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
L. FATATO, INCORPORATED

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

*Docket 2029. Complaint, Apr. 28, 1932—Order, Sept. 21, 1932*

Consent order requiring respondent, its agents, etc., in connection with the sale in interstate commerce of tomato paste not made in or imported from Italy or other foreign country or made from Italian or other foreign grown tomatoes, to cease and desist from using the word "Posillipo" on brands, labels, containers, or packages, or in advertisements or otherwise; or from using any other word, phrase, picture, etc., importing or suggesting such manufacture, importation or composition for the paste in question; subject to the permitted use of respondent's present wording, designs, etc. (minus word "Posillipo" for paste made from the "Plum-shaped tomatoes" grown in the United States or abroad, as in the order set forth and qualified as to adequate explanatory matter.

*Mr. E. J. Hornibrook* for the Commission.

*Parsons & Constable*, of New York City, for respondent.

COMPLAINT

Acting in the public interest and 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 L. Fatato, Inc., a 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. The respondent L. Fatato, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of Brooklyn in said State. It is now and for several years last past has been engaged in the wholesale grocery business in said city of Brooklyn. Among other things, it sells a canned tomato paste under the brand "Posillipo Tomato Paste." This paste resembles thick catsup and is made from peeled and crushed tomatoes and is used in making sauces for spaghetti and other edible dishes. This paste is sold to retail customers of respondent and many of such retail customers who buy said tomato paste are in business outside of the State of New York and when orders are received therefor from said retail customers such orders are filled by respondent by

shipping the said paste from the said city of New York to the respective places of business of said retail customers.

PAR. 2. In the course and conduct of its said business respondent is in competition with other individuals, copartnerships and corporations engaged in the sale and transportation between and among various States of the United States of tomato paste used for the same purposes as is respondent's.

PAR. 3. Posilipo Tomato Paste is manufactured for respondent from tomatoes grown in this country only. Part of this product is and has been made from the globular or round variety of tomato, and a part of it is and has been made from the plum-shaped Italian tomato technically called Vignette, which is grown in the State of California. The last-named variety of tomato has been grown in this country for about four years last past. The plum-shaped Vignette tomato is a native product of Italy and is now and has been for many years grown there, chiefly on the land bordering the Bay of Naples and near the city of Naples, and near the geographical location on the Bay of Naples, which is known as Posilipo. The paste which is and has been made from this plum-shaped Italian-grown tomato has an established reputation for being especially adapted as a sauce for spaghetti, particularly among Italians in this country and abroad.

PAR. 4. In aid of the sale of its said product, either when made of the globular shaped tomato or when made of the plum-shaped (vignette) tomato as aforesaid, respondent causes the cans or containers thereof to be labeled as follows:

With pictorial representation of a bunch of Italian or plum-shaped (vignette) tomatoes, together with a view of the Bay of Naples, with a view of Mt. Vesuvius in the background and a man and woman in the foreground dressed in Italian costume, the man eating spaghetti, and the said label has printed thereon, the words:

POSILIPO TOMATO PASTE

NAPLES STYLE                      CONTENTS 6 OZ.

and the Italian words—

CONCENTRATA

INEL VUOTO

and

SALSA DI POMIDORO

TIPO NAPOLI

This above described label is upon the cans or containers of respondent's said tomato paste when it reaches the consuming public.

PAR. 5. There are among the said competitors of respondent those who sell a tomato paste, used for the same purposes as respondent's and made from the plum-shaped Italian (vignette) tomato, grown upon the lands described above, as bordering upon the Bay of Naples and imported into this country; there is one of respondent's said last described competitors who, prior to the placing upon the market of respondent's said product, labeled and sold and still labels and sells its product as Posillipo Brand Tomato Paste; there are still others of such competitors who manufacture and sell said paste made wholly of plum-shaped (vignette) tomatoes grown in the State of California.

PAR. 6. The aforesaid use by respondent of the label described in paragraph 4 hereof has the tendency and capacity to deceive the purchasing public into the belief that all of its said tomato paste is made from the plum-shaped (vignette) tomato grown in Italy, near the Bay of Naples, when in truth and in fact much of said product, so labeled and sold by respondent, is made from the common globular shaped tomato, and all of said product is made from tomatoes grown in the United States; and has the tendency and capacity to unfairly divert trade from said competitors to the respondent, and otherwise injure them.

PAR. 7. The above alleged acts and practices are all to the prejudice of the public and of respondent's said competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of said act of Congress.

#### ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission on the complaint of the Commission and the answer of the respondent, and after testimony had been taken in behalf of the Commission and the respondent thereupon having been granted by the Commission permission to withdraw its answer filed herein on the 27th day of May, 1932, and respondent having so withdrawn its answer and filed in lieu thereof an answer consenting that the Commission may make, enter, and serve upon it an order to cease and desist, and the Commission being fully advised in the premises,

*It is ordered,* That respondent, L. Fatato, Inc., a corporation, its agents, employees, and representatives, in connection with the sale, or offering for sale in interstate commerce, of tomato paste, cease and desist from using the word "Posilipo" on brands, labels, containers, packages, or in advertisements of the same, or otherwise, and from using thereon or therein any other word, phrase, picture,



or pictures, pictorial design, vignette, or device importing, implying, or suggesting that said tomato paste is manufactured in, or imported from, Italy, or any other foreign country, or manufactured from tomatoes grown in Italy or other foreign country, when such is not the fact; except that the wording, phrases, and designs of respondent's present label (minus the word "Posilipo") may be used as a brand or label, or in advertisements, of a tomato paste made from the "plum-shaped tomatoes" grown in the United States, or a foreign country, provided apt and adequate words or phrases are used in conjunction therewith and in close proximity thereto, clearly indicating that such product is made from tomatoes grown in the United States, or grown in such foreign country and manufactured in the United States, or such foreign country, as the case may be.

*It is further ordered,* That respondent shall, within 6 months after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF  
**FRANK J. CLARK, AN INDIVIDUAL TRADING UNDER  
 THE NAME AND STYLE SYNCRO MOTORS COMPANY**

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

*Docket 2032. Complaint, May 10, 1932—Order, Sept. 21, 1932*

Consent order requiring respondent, his agents, etc., in connection with sale in interstate commerce of an automobile device variously described as "Syncro", "Syncro system ignition", and "High-frequency spark transformer", to cease and desist from—

Representing that proper installation and use thereof on an automobile, (1) reduces gasoline consumption per mile from 25 percent to 33 percent, (2) prolongs life of crank case oil and eliminates necessity for change oftener than 2,500 miles, (3) eliminates carbon formation, (4) prevents spark plug fouling, (5) enables quicker starting, (6) gives complete combustion, (7) saves gas and oil wonderfully, (8) is indispensable, (9) applies wonderful new form of electricity comparable with radio, (10) is miniature welding flame, and (11) creates an "ionized field" about the plug points exerting a chemical influence on gas; and, in connection with sale to prospective purchasers or agents, for resale, to cease and desist from—

Representing falsely that he has made any special selection of such "agents" by reason of their personal qualifications or otherwise, or has put on an advertising campaign to promote the sales of such agents, or has inquiries from dealers or other prospective customers awaiting agent's attention.

*Mr. PGad B. Morehouse* 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 Frank J. Clark, an individual, trading under the name and style Syncro Motors Co., has been and now is using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Frank J. Clark, under the name and style of Syncro Motors Co., at Battle Creek, Mich., for more than two years last past has been and now is engaged in the manufacture of a patented automobile accessory or device, variously known and described as "Syncro", "Syncro system ignition", and "High-frequency spark transformer". This device consists of a lacquered metal cylinder about  $2\frac{5}{8}$  inches in diameter and  $5\frac{1}{4}$  inches in length which readily may be suspended from the radiator tierod of any

automobile. From one end of the cylinder protrude two insulated wires marked "C" and "D" the former for attachment to the spark coil and the latter for connection with the distributor, whereby it may become connected in series with the secondary circuit of the ignition system. In such connection the said device operates as an induction coil, intensifying the spark discharge across the spark plug gap in the head of the engine cylinder.

Respondent advertises in the classified columns of newspapers throughout the country for agents. Upon contact being established with a prospective agent respondent mails the latter a series of form letters by means of which he solicits and sells for cash in advance and for cash on delivery said devices, in quantities of from one to a gross, to the said agents and to other customers procured by said agents.

When sold, said devices are shipped by respondent from his factory at Battle Creek, Mich., into and through various other States of the United States, usually to "agent" customers for both their own use, and resale at a profit to other ultimate consumers, and also in many instances directly to the ultimate consumer.

PAR. 2. In the course and conduct of his business aforesaid respondent is in competition with others engaged in the sale and distribution in interstate commerce of other automobile engine accessories, devices or attachments, including spark intensifiers, transformers, converters, and condensers, many of which are similar to respondent's aforesaid device, and all of which are designed to and do accomplish the same purpose as respondent's device when installed in the ignition system of an internal-combustion engine.

PAR. 3. In the course and conduct of his business as aforesaid, by letters, circulars, leaflets and other advertising media, sent to prospective agents and other customers, respondent has made and does make false and misleading representations with reference to the effect of said device when properly installed as aforesaid, to wit:

1. That it will reduce the amount of gasoline consumed per mile from 25 percent to 35 percent.
2. That it will prolong the life of crank case oil and that due to its use change of oil is not necessary oftener than every 2,500 miles.
3. That it will eliminate the formation of carbon in the cylinders.
4. That it will prevent the fouling of spark plugs.
5. That it will increase the power of the engine.
6. That it will give quick starting to a cool motor.
7. *Many Dollars Saved.*—Increased miles per gallon of gasoline—you will positively gain this with the Syncro. And with complete combustion there will be no waste—no carbon. So your Syncro makes double saving for you. It pays for itself by the gasoline and oil it saves—and gives you a better driving car.

## Complaint

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8. The Syncro is a wonderful gas and oil saver. It starts the motor quicker and easier. It is a valuable and indispensable instrument.

9. *Amazing oil saving.*—Oil must be changed in a car with ordinary ignition every 500 miles, because *unburned* gasoline leakage thins the lubricant. The new Syncro, by burning all the gasoline with its big, quick, white-hot flame, stops this leakage completely, so that oil can often be used for 2,500 miles.

10. The Syncro System is scientifically designed to change the ordinary gasoline of automobiles to high-frequency—the wonderful new form of electricity which has made radio possible—the amazingly powerful electricity that can carry a voice across the Atlantic Ocean without a wire to travel on.

11. The Syncro spark is a real flaming arc with a full, fat, white-hot core—in fact it is a miniature welding flame. It fires every cylinder every time, even with the present low-grade gasoline. It is so intense that it actually burns oil and carbon, and on cars which have pumped oil so freely that the plugs had to be cleaned daily, not a cylinder has missed fire since the Syncro was installed—and not a plug cleaned.

12. \* \* \* The several sparks occurring in such a short space of time create what is known as an “ionized field” about the plug points, which exerts a chemical influence on the gas in the cylinder about the plugs, separating the various molecules forming these gases into groups of atoms more suitable for combustion, and a quicker burning mixture is the result.

Whereas, in truth and in fact said device, when properly installed in accordance with respondent's directions, will not reduce the amount of gasoline consumed per mile from 25 percent to 35 percent—will not prolong the life of the crank case oil and eliminate the necessity for change thereof oftener than 2,500 miles—will not eliminate the formation of carbon in the cylinders—will not prevent the fouling of spark plugs—will not increase the power of the motor—will not enable a cool motor to start more quickly—will not save many dollars or give complete combustion—is not a wonderful gas and oil saver—starting the motor quicker and easier—is not an indispensable instrument or device and does not burn all of the gasoline—does not apply to the ignition system any wonderful new form of electricity comparable with radio—is not a miniature welding flame and does not create an “ionized field” about the plug points exerting a chemical influence on the gas.

PAR. 4. In the course and conduct of his business as aforesaid by form letters and other correspondence sent to prospective agent customers in soliciting the sales to them of such device, respondent has made and does make false and misleading representations as follows:

1. That the prospective agent has been especially selected from among many applicants in a particular territory by reason of his personal qualifications for the position.

2. That respondent plans to place a sales force under the control of said prospective agent customer and put on a “\$10,000 advertising campaign” to assist the sales of the device in said territory.

3. That it is advisable for the prospective agent customer to buy from respondent and carry in stock a large number of the aforesaid device because of many inquiries from dealers and numerous prospective customers for respondent has on hand awaiting the prospective agent's attention.

Whereas in truth and in fact respondent has not made any special selection of agents by reason of their personal qualifications or otherwise; has not put on any advertising campaign in cooperation with or for the benefit of promoting the sales of such agents; and has not, at the time he so represents, any inquiries from dealers and other prospective customers awaiting the prospective agent's attention.

PAR. 5. By placing such advertising media and false claims, heretofore referred to in paragraph 3, in the hands of his so-called agents, respondent furnishes and has been furnishing said agents with the means of deceiving other prospective purchasers and ultimate consumers and thereby encouraging them so to do. The agents and other customers, relying upon and believing the false and misleading representations set out in paragraphs 3 and 4, supra, to be true, are and have been induced to buy respondent's said device.

PAR. 6. The foregoing false and misleading representations, and each of them, are calculated to and have the tendency to mislead and deceive purchasers and prospective purchasers of respondent's device into the erroneous belief that it will accomplish the effects and results claimed for it when properly installed in connection with ignition systems of automobiles, and into the erroneous belief on the part of prospective agent customers that respondent has made a special selection of such agent customer for personal reasons, and is going to cooperate with him in an effort to assist sales by an expensive advertising campaign, and that already numerous inquiries are awaiting the attention of such agent for profitable resales, and thereby respondent induces the purchase by agent customers and others of said device in reliance upon such erroneous beliefs; said misleading and false misrepresentations are likewise calculated and have the tendency to divert trade from and otherwise injure the competitors of respondent.

PAR. 7. The above 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 proceeding having come on for final hearing by the Federal Trade Commission upon the complaint and respondent's answer

waiving all further proceeding and consenting that the Commission may make, enter and serve upon him an order to cease and desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises,

*It is now ordered,* That the respondent, Frank J. Clark, an individual trading under the name and style Syncro Motors Co., his agents, representatives, servants, and employees, in connection with the sale or offering for sale in interstate commerce of a certain automobile accessory or device variously known and described as "Syncro", "Syncro system ignition", and "High-frequency spark transformer", cease and desist from representing that said device, when properly installed on an automobile in accordance with respondent's directions:

- (1) Will reduce the amount of gasoline consumed per mile from 25 percent to 33 percent;
- (2) Will prolong the life of the crank case oil and eliminate the necessity for change thereof oftener than 2,500 miles;
- (3) Will eliminate the formation of carbon in the cylinders;
- (4) Will prevent the fouling of spark plugs;
- (5) Will enable a cool motor to start more quickly;
- (6) Will give complete combustion;
- (7) Is a wonderful gas and oil saver;
- (8) Is an indispensable instrument or device;
- (9) Applies to the ignition system a wonderful new form of electricity comparable with radio;
- (10) Is a miniature welding flame; or
- (11) Creates an "ionized field" about the plug points exerting a chemical influence on the gas.

*It is further ordered,* That respondent, his agents, representatives, servants, and employees, in connection with the sale or offering for sale in interstate commerce to prospective purchasers, or so-called "agents", of the said accessory or device for resale by said purchasers, cease and desist from representing that he has made any special selection of said "agents" by reason of their personal qualifications or otherwise; or that he has put on an advertising campaign in cooperation with or for the purpose of promoting the sales of such "agents"; or that he has inquiries from dealers or other prospective customers awaiting the prospective "agent's" attention, except in those instances where such statements are true.

*It is further ordered,* That the respondent shall, within 60 days from the date of 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 herein set forth.

## Complaint

IN THE MATTER OF  
ROGGEN BROS. & CO., INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2053. Complaint, June 29, 1932—Order, Sept. 22, 1932*

Consent order requiring respondent corporation, its officers, etc., to cease and desist from sale in interstate commerce of shirts, not made in Troy, N.Y., with words "Troy Tailored" or "Troy" thereon or attached thereto.

*Mr. Henry C. Lank* 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 the Roggen Bros. & Co., Inc., a 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 the said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of New York. The executive offices of the respondent are located in the city of New York, State of New York, and their factory or mill is located in the city of Elizabeth, State of New Jersey. Respondent is engaged in the manufacture of men's shirts and in the sale and distribution thereof in commerce between and among the various States of the United States. Respondent sells its shirts to retail dealers exclusively. It causes its said shirts when so sold to be shipped from its factory located in the State of New Jersey, or from its executive office located in the State of New York, to purchasers thereof located in a State or States of the United States other than the State from which the shipment was made. In the course and conduct of its business respondent is in competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution in interstate commerce of men's shirts.

PAR. 2. Respondent in the course of its business as described in paragraph 1 hereof, places on the shirts manufactured by them in Elizabeth, N.J., tags or labels bearing the words "Troy Tailored" without other distinguishing marks to show the true place of manufacture of said shirts. The said shirts are in fact manufactured or made in Elizabeth, N.J., and not in Troy.

PAR. 3. For a long period of time the manufacturers operating in Troy, N.Y., and the Troy (N.Y.) Chamber of Commerce and other associations of business men in that city, have extensively advertised men's shirts and other products manufactured in Troy, N.Y. In such advertising the words "Troy," "Made in Troy," "Troy Made," "Tailored in Troy," "Troy Tailored" have been featured, together with the claim that men's shirts made in Troy meant superior design, style, quality, and workmanship. As a result of such advertising the word "Troy" when used in connection with shirts for men has come to be understood by the trade and consuming public as indicating that shirts made in Troy, N.Y., are of the quality which, in the minds of the consuming public as the result of such advertising, has become associated with shirts for men actually manufactured in Troy, N.Y., and labeled and advertised as having been manufactured in that city. The use by respondent of the word "Troy" on labels placed on shirts manufactured in Elizabeth, N.J., and sold by it as aforesaid is calculated to and has the capacity and tendency to deceive the purchasing public, and such labels have been and are being used by respondent as a means of enabling it to pass off shirts not in fact made in Troy, N.Y.

PAR. 4. The acts and things done by respondent as hereinbefore set out 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 coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission, the respondent's answer that respondent waives hearing on the charges set forth in the complaint and desires not to contest the proceeding and consents that the Commission may make, enter, and serve upon it without trial, without evidence and without findings as to the facts or other intervening procedure an order to cease and desist from the violations of law charged in the complaint; and the Commission having duly considered the matter and being now fully advised in the premises:

*It is ordered*, That respondent, its officers, agents, representatives, and employees, cease and desist from selling or offering for sale in interstate commerce shirts with the words "Troy Tailored" or the word "Troy" alone or in combination or conjunction with any other



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## Order

word or words placed upon such shirts or upon labels or tags attached thereto unless such shirts are in fact manufactured or made in the city of Troy, N.Y.

*It is further ordered,* That the respondent, Roggen Bros. & Co., Inc., shall, within 60 days after the 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 desist hereinabove set forth.

IN THE MATTER OF  
**MACHINE TOOL DISTRIBUTORS, CHICAGO DISTRICT,  
ITS DIRECTORS, EXECUTIVE COMMITTEE AND  
MEMBERS**<sup>1</sup>

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

*Docket 1882. Complaint, Dec. 11, 1930—Decision, Sept. 29, 1932*

Where an association composed of persons and concerns (a) engaged in manufacture and/or sale of presses, drills, lathes, and other "machine tools" to customers consisting principally of machine shops and manufacturing establishments, (b) doing 85 percent of the business in new tool machinery in the "Chicago district", covering all of Iowa and parts of Indiana, Illinois, Wisconsin, Michigan, and Nebraska, and (c) comprising the only dealers in new machine tools in said Chicago district who accept used, in part payment for new, machinery, and who, prior to association's formation, were active competitive bidders among themselves and with others on such trade-in allowances to customers; and the directors, executive committee, and members of said association; with intent of eliminating members' competitive bidding on used machinery trade-in allowances, and limiting the same,

Adopted, maintained and enforced the so-called "Chicago Appraisal Plan", pursuant to which (1) members are obligated to register their own bid with association's central office and advise themselves of any prior offers before making their own, (2) members' offers must be firm cash offers, and (3) member making initial appraisal offer or member making latest increase may be called upon to accept used machinery involved at his appraisal figure irrespective of his securing order;

With tendency to cause members to refrain from increasing prior appraisals and to limit their bids, and with result of depriving aforesaid customers of competitive bids from them, or from the largest, local, used machinery dealer, to whom members without used machinery departments turned for appraisals, and of compelling them to accept smaller allowances for their used machinery trade-ins than they would have otherwise received and thus pay higher prices for new machinery, and with an undue tendency (a) to suppress competition in interstate commerce between said members in purchase of used, "trade-in" machinery, and in sale of new machines, and (b) deprive customers of the free and open competitive market for their used machinery, theretofore enjoyed by them; all to the prejudice of the public and member 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.

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<sup>1</sup> Erroneously named in the complaint as Chicago Machine Tool Distributors.

*Mr. Everett F. Haycraft* for the Commission.

*Mr. Nathan Haffenberg* and *Mr. Joseph Rosenbaum*, 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, Chicago Machine Tool Distributors, an unincorporated association with headquarters and principal place of business in Chicago, and its directors, executive committee, and members,<sup>2</sup> engaged in the manufacture or sale of heavy machinery to consumers in the several States, but principally in the "Chicago district",<sup>3</sup> with entering into a cooperative undertaking, with intent and effect of eliminating independent competitive bidding on "trade-ins", 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, including among their members about three fourths of the dealers in heavy tool machinery in the aforesaid Chicago district, carried out their aforesaid purposes and undertaking through adoption and use of the so-called "Chicago appraisal plan",<sup>4</sup> under which the various members (1) are not permitted to quote a "trade-in" allowance to a prospective purchaser and negotiator for new machinery until they have communicated with the central office, set-up under the plan referred to, (2) have been advised of bids, if any, theretofore submitted by any other members, (3) are required to make their offers or bids firm, cash offers, and (4) the member making the initial appraisal, if not increased by the others, or the one making the last increase, if any increase, is obligated to take the "trade-in", irrespective of which member secures the new business.<sup>5</sup>

Respondent association further, as charged, in pursuance of aforesaid plan and to insure cooperation among the members in the operation thereof, "has caused to be mimeographed and distrib-

<sup>2</sup> The various respondents are set forth in the findings, *infra*, at page 51.

<sup>3</sup> As known in the trade, said district includes the State of Iowa and parts of the States of Illinois, Indiana, Wisconsin, Michigan, Ohio, and Nebraska.

<sup>4</sup> Described in detail in the findings, *infra*, at page 53.

<sup>5</sup> As alleged in the complaint, "upon consummation of any deal involving a trade-in the successful member immediately notifies the central office, so that their records may be closed, and if the successful member is not the one making the last appraisal, 'whether original or raised,' then the central office will give the successful member the name of the member making the last appraisal, 'whether original or raised,' and the successful member will then notify that member of the consummation of the deal and find out where the used or old machine or machinery is to be shipped, etc.;" complaint further alleging "that all transactions between members of respondent association relating to used or old machines or machinery are required by the rules of said association to be on a cash basis."

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uted to its members, and to manufacturers, dealers, and associations of heavy tool machinery throughout the several States of the United States, circulars<sup>6</sup> describing in detail the method of procedure to be followed by a member in putting into effect said plan. Said respondent association has also prepared and distributed among its members numerous printed forms designed for the purpose of making reports of appraisals, and said forms are used by the members for such purposes."

Said Chicago appraisal plan engaged in and carried on by respondents since October 1, 1928, "is for the purpose and has the effect and result", as charged, "of restricting, restraining, and suppressing competition in interstate commerce between the respondent members of respondent association in the purchase and sale of used or old machines or machinery which are offered in part payment on a new machine or machinery by purchaser, and the purchase and sale of new machines or machinery, and results in said purchasers being deprived of the free, open competitive market for their said used or old machines or machinery which they would have access to and enjoy in the absence of the aforesaid 'Chicago appraisal plan', which is being operated through the cooperation of said respondent Chicago Machine Tool Distributors, and the individual respondent officers, directors, executive committee and members of said association"; all to the injury and 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" (38 Stat. 717), the Federal Trade Commission, on December 11, 1930, issued and thereupon served its complaint, as required by law, upon Machine Tool Distributors, Chicago district (erroneously named therein Chicago Machine Tool Distributors), its directors, executive committee, and members, hereinafter more fully described, and referred to as respondents, in which said complaint it is charged that respondents have been and now are using unfair methods of

<sup>6</sup>In said circular describing the "Chicago appraisal plan", the central office is stated to be "for the purpose of acting as a clearing house for all information concerning trade deals among dealers", and its duties are described as follows: "It will be the duty of the central office to receive any appraisals made by any dealers and put it in usable form, so that they will be in a position to supply any inquiring dealer relative to appraisals made. The central office shall require each dealer to confirm in writing on forms which shall be furnished, both the appraisal price and any changes in the appraisal price, and all details called for on the forms."

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 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 briefs and oral argument. Briefs having been filed on the part of the Commission and of the respondents, and counsel for the Commission and for 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 its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents herein are:

(a) Machine Tool Distributors, Chicago district, erroneously named in the complaint as Chicago Machine Tool Distributors, a voluntary, unincorporated association, organized on or about October 1, 1928, and composed of several persons, partnerships, and corporations, engaged in the business of manufacturing and selling, or selling, heavy machinery described in the trade as "machine tools", which included presses, drills, lathes, shapers, planers, grinders, slotters, shears, boring machines, milling machines, screw machines, etc. Said respondent, which will hereinafter be referred to as respondent association, has its headquarters and principal place of business in the city of Chicago, State of Illinois;

(b) The board of directors of said respondent association, composed of at least one representative from each member thereof. The names and locations of said directors, and the names of the members whom they represent, are as follows:

Directors	Respondent members
W. H. Taylor.....	E. W. Bliss Co., Chicago, Ill.
Herbert S. Robinson.....	Concinnati Shaper Co., Chicago.
E. L. Essley and E. P. Essley....	E. L. Essley Machinery Co., Chicago.
N. A. Booze and C. A. Odegaard..	Federal Machinery Sales Co.
R. S. Dean.....	Dean Machinery Co., successor to Manning Maxwell & Moore.
J. R. Porter and Frank Seese.....	Marshall & Huschart Machinery Co.
D. S. Woods.....	Pratt & Whitney Co., subsidiary of Niles-Bement-Pond Co.
D. F. Noble.....	Doing business as D. F. Noble Co.
A. G. Bryant.....	Joseph T. Ryerson & Son.
E. H. Wachs and C. R. Gregg....	Wachs-Gregg Co., successor to Stocker-Rumely-Wachs Co.

Directors	Respondent members
P. E. Rice.....	Hendey Machine Corporation.
W. J. Hannum.....	Gisholt Machinery Co.
Howard K. Jackson.....	Browne & Sharpe Co., erroneously named in the complaint Browne & Sharpe Manufac- turing Co.
George Erwin.....	Kearney & Trecker Corporation.
John C. Price.....	Jones & Lamson Machine Co.
Oscar Nordstrom.....	Norton Co., erroneously named in complaint Northern Emery Wheel Co.
Clarence James.....	Leland-Gifford Co.
H. F. McCormick.....	Heald Machine Co.
C. A. Schuman.....	Richard-Badger-Packard Co., successor to Badger-Packard Machinery Co.
L. C. Aldrich.....	Landis-Tool Co.
W. A. Mitchell.....	Milwaukee Machinery Co.
.....	Warner-Swasey Manufacturing Co.
.....	General Machinery Corporation.

(c) The executive committee of the said respondent association, composed of the following individuals, elected by its board of directors from the membership of the respondent association:

J. R. Porter, chairman,	E. H. Wachs,
N. A. Booze, secretary,	P. E. Rice.
E. P. Essley, treasurer,	

(d) The members of said association, named in subparagraph (b) hereof.

PAR. 2. The members of the respondent association, in the course and conduct of their said business, cause the machinery sold by each of them, respectively, to be transported, when so sold, from their respective places of business, or from the places of business of the respective manufacturers of such machinery, through and into various States of the United States to the respective purchasers thereof, in active competition with the other members of such respondent association, and with various persons, partnerships, and corporations also engaged in the manufacture and sale, or the sale, of machine tools in interstate commerce among the several States of the United States. Some of the larger and more influential members of the said respondent association, in the course and conduct of their said business, solicit and accept used machinery in part payment of the purchase price of new machinery sold by them, and upon the consummation of such transaction, cause such used machinery to be transported from the State in which it is obtained through and into other States of the United States. In their solicitation of such used machinery, said members of respondent association thus engaged prior to the formation of the said respondent association actively com-

peted in bidding for such used machinery with the other members of said respondent association likewise engaged, and with various persons, partnerships, and corporations also engaged in the solicitation of used machinery as part payment for new machinery sold or offered for sale by them in interstate commerce among the several States of the United States.

PAR. 3. On or about October 1, 1928, said respondent association, with the purpose and object of eliminating competitive bidding by its members, and to limit the amounts allowed by them for used machinery, adopted and put into effect, and have since maintained and enforced, a method of cooperation between and among the members of the said respondent association, controlling the allowance to be made by them for used machinery, known as the "Chicago appraisal plan". Under the said Chicago appraisal plan a "central office" was established for the purpose of operating as a clearing house for all information concerning trade deals among members of said respondent association when used machinery was accepted as part payment for new machinery. The appraisal procedure followed under said Chicago appraisal plan is as follows:

Each dealer will be expected to communicate with the central office designated on all deals where used tools are offered in trade to determine whether or not such tools have already been appraised by another dealer. If the tools have not been appraised said dealer should then proceed to appraise them according to his ideas with the understanding that he is making a firm offer in his appraisal. He will not make an offer to the customer until his appraisal has been made, acknowledged, and appraisal register number given him by his central office. This appraisal shall not be considered complete without its naming a definite delivery point. It is conceivable that a customer may require one of our members to remove the subject machine from its location in his shop. In other cases, customer may deliver the machine to his own platform. When special f.o.b. points of this nature are involved, the appraisal must positively include a complete explanation of the exact f.o.b. point.

By firm offer we mean that the dealer making the offer agrees to take the machinery in question, irrespective of whom shall secure the order. It is manifest, therefore, that the price given in the firm offer would naturally be such a price as the dealer making it would be willing to give for the machine in an outright purchase. This appraisal shall be confirmed the same day by mail to the central office on forms which will be furnished.

After said appraisal is made, should any dealer desire to raise the appraisal price, he may do so with the understanding that he also is making a firm offer, first advising the central office by 'phone and also confirming the same day by mail, on forms provided, of such raise and waiting until eleven o'clock of the second working day before submitting the new appraisal to the customer. The central office will immediately notify other interested dealers of the increased appraisal by 'phone (except out-of-town members), confirming by mail on proper form. Other interested dealers are not to notify the customer of

the new appraisal price, prior to eleven o'clock the morning of the second working day.

In the event that the deal involving the trade-in shall be consummated on the basis of the original appraisal, then the member dealer securing the order shall have the privilege of electing whether or not he will take the used machine at the appraised price. If he does not want it at that figure he will then turn it over to the member dealer who shall have made the initial appraisal unless he himself shall have been the initial appraiser. In the event that there shall have been one or several increases made in the appraisal, then whichever dealer shall have made the last increase shall be entitled to receive the machine at that price, regardless of whomsoever shall have secured the order for the new machine. In this latter case, you will recognize that the privilege of taking the machine at the higher appraised price is taken away from all participating member dealers other than the one having made the final appraisal.

We recommend a time limit on appraisals of thirty days from the date of the first appraisal, or any subsequent higher appraisals. In other words, each time appraisal is changed, time limit is thirty days from that date. The appraiser has the privilege of withdrawing his appraisal at the end of the thirty-day period, providing he shall notify the central office five or more working days before the thirty-day expiration date. If this privilege is not exercised the appraisal is automatically renewed at the end of each thirty days.

Where a dealer quotes a proposed customer, it is recommended that he specify in his quotation a definite expiration date which shall be on the same date of the following month. Should the day of that date be a nonworking day, then the period shall expire at the close of the first following working day.

The object of the above is to relieve any dealer from his firm offer within a reasonable time in case he so desires, as it is obvious that at times a favorable market for any particular tool can continue for a limited time only.

When a deal involving a trade-in is closed, the successful dealer shall notify the central office so that their records may be properly marked. In the event that the successful dealer was not the one who made the last appraisal, whether original or raised, then central office should give to the successful dealer the name of the dealer who made the last appraisal whether original or raised. Successful dealer will then get in touch with the appraiser and notify him of the consummation of the deal and find out where the machine is to be shipped, etc.

It should be understood that all transactions between dealers are to be on a cash basis. This follows the usual procedure on used equipment.

To make this plan successful it is necessary for all manufacturers to make their allowance through their respective dealers who are members of this organization. An exception is recognized where a machine has not given satisfaction and is replaced by another of the same manufacture.

The function performed by the central office under said Chicago appraisal plan is as follows:

It will be the duty of the central office to receive any appraisals made by any dealers and put it in usable form, so that they will be in a position to supply any inquiring dealer relative to appraisals made. The central office shall require each dealer to confirm in writing on forms which shall be furnished, both the appraisal price and any changes in the appraisal price and all details called for on the forms.



The territory affected by the said Chicago appraisal plan is as follows:

*Illinois.*—All north of and including the counties of Pike, Scott, Morgan, Sangamon, Christian, Shelby, Coles, and Edgar.

*Indiana.*—All north of and including the counties of Benton, White, Carroll, Cass, Miami, Wabash, Noble, and De Kalb.

*Iowa.*—The entire State.

*Wisconsin.*—East of and including the counties of Ashland, Price, Rusk, Chippewa, Dunn, and Pepin.

*Michigan.*—West of and including the counties of Branch, Calhoun, Eaton, Clinton, Gratiot, Isabella, Clare, Missaukee, Kalkaskia, Antrim, Charlevoix, and Emmet, and including the Upper Peninsula.

*Nebraska.*—East of and including the counties of Dakota, Thurston, Cunning, Colfax, Platte, Nance, Howard, Sherman, Buffalo, Phelps, and Harlan.

PAR. 4. Of the total volume of business in new tool machinery transacted in the Chicago district, which comprises the territory described in the foregoing paragraph, approximately 85 percent is done by the members of said respondent association. Although all of said members had agreed to observe the said Chicago appraisal plan in their dealings with their customers, as a matter of actual practice, only the larger members had operated under said plan, due to the fact that dealers in new machinery generally prefer not to accept used machinery as part payment for new machinery. Since the said Chicago appraisal plan was put into effect, on or about October 1, 1928, more than one thousand transactions have been reported to the said central office by the said members, in which used machinery belonging to customers to whom new machinery was sold, was either offered to or accepted by said members as part payment of the purchase price. The aggregate value of said used machinery amounted to approximately \$250,000. In 63 instances out of the total of 1,061 transactions raised bids were submitted, and in such instances the aggregate amount of the raised bid exceeded the aggregate amount of the original bids submitted by approximately \$8,500. The small number of instances where raised bids were submitted is the result of the observance of the following provision of the said Chicago appraisal plan:

In the event that the deal involving the trade-in shall be consummated on the basis of the original appraisal, then the member dealer securing the order shall have the privilege of electing whether or not he will take the used machine at the appraised price. If he does not want it at that figure he will then turn it over to the member dealer who shall have made the initial appraisal unless he himself shall have been the initial appraiser. In the event that there shall have been one or several increases made in the appraisal, then whichever dealer shall have made the latest increase shall be entitled to receive the machine at that price, regardless of whomsoever shall have secured the order for the new machine.

There has been and now is a tendency on the part of said members, because of the foregoing provisions of said Chicago appraisal plan, to refrain from increasing the appraisal price which has been recorded with the central office by another member, and to offer to customers and prospective customers the appraisal price which has already been offered to said customers, and recorded in the central office. The result of this tendency has been and is that the customers of said members, consisting principally of machine shops and manufacturing establishments, are deprived of competitive bidding and compelled to accept a smaller allowance for used machinery offered in trade as part payment for new machinery purchased from said members than they would have received if the said members had not adopted and observed the said provisions of the said Chicago appraisal plan. Said customers are thus compelled to pay higher prices for their new machinery, there being a direct relation between the amount allowed by said members for used machinery as part payment and the total purchase price of the new machinery sold.

PAR. 5. The members of the said respondent association are the only dealers in new machine tools located in the said Chicago district, who will accept used machinery as part payment for new machines. There are in said territory, however, three recognized dealers in second-hand or used machinery who buy and sell used machinery in large quantities for profit, and who are not members of said respondent association. The members of said respondent association who do not have used machinery departments of their own, call in one of these three used machinery dealers to make the appraisal of the used machinery offered in trade by their customers, and said appraisals are submitted by said members to the central office of the said respondent association as and for the bids of said members. In almost all instances the largest of the three used machinery dealers, one Louis Emmerman, is called upon by said members for this purpose, with the result that the customers of said members are deprived of a substantial independent competitive market for their used machinery, although in some instances such customers were able to and did receive from other smaller dealers in used machinery, or from customers in the market for used machinery who were not dealers, a cash price larger than that offered by the said members for their used machinery.

PAR. 6. The aforesaid acts and things done by the respondents herein are all to the injury of the public and the competitors of the

members of respondent association, and unduly tend to suppress competition in interstate commerce between said members in the purchase of used machinery offered in part payment for new machinery by customers of said members, and in the sale of new machinery, and unduly tend to deprive said customers of a free and open competitive market for their used machinery, which they had enjoyed prior to the formation of the respondent association and the adoption and maintenance of the said Chicago appraisal plan by said members.

#### 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 the competitors of the members of said respondent association, and are unfair methods of competition in commerce, in 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 on the complaint of the Commission, the answer of respondents, the testimony, 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 named in the caption hereof as members of Machine Tool Distributors, Chicago district, their officers, directors, agents, representatives, and employees, do cease and desist from the use of the Chicago appraisal plan, or any other similar appraisal plan, in the course and conduct of their said businesses in interstate commerce, through which and by which, pursuant to agreement among themselves, they register with a central office or exchange with each other their firm bids or appraisals on used machinery offered to them as part payment for new machinery with the understanding that the member making the first or the highest appraisal or bid accept or purchase the used machinery, paying cash therefor, regardless of whether or not such bidder shall make a sale of new machinery to the customer offering the used

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machinery as part payment; or from the adoption of any other plan whereby respondent members suppress or restrict competition between and among themselves in the bidding for or appraising of used machinery offered in trade as part payment for new machinery.

*It is further ordered,* That the said respondents named in the caption hereof as members of Machine Tool Distributors, Chicago district, shall, each of them, within 60 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.

## Syllabus

IN THE MATTER OF  
ARTHUR GUERLIN, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

*Docket 2015. Complaint, Mar. 3, 1932—Decision, Oct. 10, 1932*

Where a corporation dealing in perfumes, talcum powders, face powders, other cosmetics, and toilet articles, made in the United States from the cheaper grade of domestic essential oils and other ingredients, in Japanese pearls purchased by it from domestic sources, and in other domestic jewelry, etc., and in sale of said various articles to retailers and peddlers, featured the words "Arthur Guerlin", its corporate name, and "Paris, New York" upon the containers of its aforesaid articles;

Notwithstanding fact (1) it had no connection with Guerlain, Inc., Paris manufacturer and importer of perfumes, toilet articles, jewelry, etc., nor with Guerlain Perfumery Corporation of Delaware, United States distributor of said concern, selling, under name "Guerlain", said concern's products, long known in United States under such name as products of superior quality made by it, and (2) said corporation's products, excepting aforesaid pearls, were both of domestic origin and ingredients, and not French toilet articles and jewelry, long highly esteemed among the trade and purchasing public, and considered by many as superior to the domestic products, in preference to which many of the public bought the French articles;

With capacity and tendency to mislead vendees and many of the purchasing public as to source or origin of products in question and induce their purchases in such mistaken belief, and with result of placing in hands of dealer and peddler vendees means of committing a fraud upon a substantial part of the purchasing public by enabling them to represent and sell said perfumes, etc., as made in or imported from Paris and/or as well-known products of French concern above referred to, and with tendency to divert business from and otherwise injure and prejudice competitors dealing in imported perfumes, etc., made in Paris, competitors dealing in purely domestic articles, competitors dealing in perfumes made of essential ingredients manufactured in Paris and imported therefrom, and variously selling their perfumes, jewelry, etc., without misrepresenting same, and competitors who do not through corporate name or label mislead or deceive vendees or purchasing public as to their products being those of another, and thereby substantially injure a competition of substance:

*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. Edward L. Smith* 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 Delaware corporation engaged in the sale of perfumes, talcum powders, other cosmetics and toilet articles, and pearls, jewelry, and other articles to retail dealers and peddlers in various States, and with principal office and place of business in New York City, with simulating corporate name of competitor, and with misbranding or mislabeling as to 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, prominently brands and labels the containers of its perfumes, cosmetics, and toilet articles (made of the cheaper grades of essential oils and other ingredients, and inferior in quality to those made of the better grades of such oils and ingredients), and jewelry and other articles dealt in by it, as aforesaid, with the words "Arthur Guerlin, Paris, New York", notwithstanding fact that (a) pearls in question do not come from Paris, but are the artificial product, made in Japan and purchased by him from dealers in the United States, and the perfumes, other cosmetics and other toilet articles, made in the United States from ingredients there purchased, are like the other products dealt in by him as aforesaid, by him bought in the United States, and (b) said individual has no connection with the well-known French house of Guerlain, Inc., or its American subsidiary, Guerlain Perfumery Corporation of Delaware, perfumes, toilet articles and other products of which house have long been favorably known and identified and extensively advertised throughout the United States under the name Guerlain as of superior quality.

Said labeling and designation of its products by respondent, as alleged, and use of the words, "Arthur Guerlin", have capacity and tendency to mislead and deceive vendees and many of the purchasing public into believing said perfumes and other articles (a) to have been made in and/or imported from France, i.e., to be genuine French perfumes, talcum powders, etc., long esteemed and highly regarded among the trade and purchasing public in the United States, and bought by many in preference to the domestic products, or (b) to be the imported products of the well-known French house above referred to.

Said labeling and designation of its perfumes, powders, etc., and use of its said corporate name, as aforesaid, also have the effect, as alleged, of placing in the hands of its dealer and peddler vendees an instrument and means enabling them to commit a fraud upon a

substantial portion of the purchasing public through representing, offering, and selling said perfumes, etc., as made in or imported from Paris, or as the products of the aforesaid house, as the case may be, and said acts and practices, as charged, tend to divert business from, and otherwise injure dealer competitors, including those who (1) deal in imported perfumes, etc., made in Paris, and rightfully and truthfully so represented by them, (2) deal in domestic perfumes, etc., without any such misrepresentations as to their origin, (3) deal in perfumes, the essential ingredients of which are made in Paris and imported by them, and who truthfully represent their perfumes, etc., as thus made, (4) deal in pearls and jewelry imported from France, and rightfully and truthfully represented as such, (5) deal in domestic pearls and jewelry in no wise represented as made in, or imported from Paris, or, who (6) do not by their labels or corporate name, mislead or deceive their vendees, or the purchasing public into believing their articles to be those of another manufacturer or dealer; so that "substantial competition is injured to a substantial extent"; 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 on March 3, 1932, issued its complaint against Arthur Guerlin, Inc., hereinafter referred to as respondent and on June 28, 1932, caused the said complaint to be served upon respondent as required by law, in which complaint it was charged that respondent was 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 provision being set forth in haec verba in said notice and providing in part as follows (Rule III, sub. div. 3):

(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.

Respondent has not at any time caused its appearance to be entered in this proceeding nor has it during the said thirty-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 might 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 its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Arthur Guerlin, Inc., is a corporation organized in March, 1930, 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, State of New York. It is and ever since its organization has been engaged in the business of selling perfumes, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles, to retail dealers and to peddlers located in the State of New York and in various other States of the United States. Respondent causes and has caused said perfumery, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles, when sold to be transported from its place of business in the City of New York to its said vendees at their respective places of business. In the course and conduct of its said business respondent is in competition with other corporations and with partnerships and individuals engaged in the sale of perfumes, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles, in commerce between and among the various States of the United States.

PAR. 2. All of the articles in which respondent deals, with the exception of its pearls, are made in the United States of America and are purchased by respondent in the United States of America. The pearls in which it deals are artificial pearls made in Japan and purchased by the respondent in the United States of America from dealers in such pearls. The perfumes, talcum powders, face powders, other cosmetics and toilet articles sold by respondent are made from the cheaper grades of essential oils and other ingredients and are of a quality inferior to perfumes, talcum powders, face powders, other cosmetics and toilet articles made of better grades of essential oils and other ingredients.



PAR. 3. The perfumes, talcum powders, face powders, other cosmetics and toilet articles, and pearls, jewelry and other articles dealt in by respondent, as set out in paragraph 1 hereof, are sold in containers on which appear in prominent lettering the words "Arthur Guerlin, Paris, New York". Respondent delivers said perfumes, talcum powders, face powders, other cosmetics and toilet articles, and pearls, jewelry and other articles so labelled and designated and packed as aforesaid, to its aforesaid vendees and said perfumes, talcum powders, face powders, other cosmetics and toilet articles still so labelled and designated and packed are by said vendees displayed, offered for sale, and sold to the purchasing public.

PAR. 4. Perfumes, talcum powders, face powders, other cosmetics and toilet articles, manufactured in France have for many years enjoyed widespread popularity, goodwill, and demand among the trade and purchasing public throughout the United States, many of whom believe and consider that perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in France and superior in quality and other desirous characteristics to perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in the United States and many of the purchasing public throughout the United States purchase perfumes, talcum powders, face powders, other cosmetics and toilet articles, manufactured in France and imported into the United States in preference to purchasing perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in the United States. Jewelry manufactured in France and pearls imported into the United States from France have for many years enjoyed widespread popularity, goodwill and demand among the trade and purchasing public throughout the United States, many of whom believe and consider that jewelry manufactured in France and pearls imported from France into the United States are superior to jewelry manufactured in the United States and to pearls imported into the United States from countries other than France and many of the purchasing public throughout the United States purchase jewelry manufactured in France and imported into the United States and pearls imported from France into the United States in preference to purchasing jewelry manufactured in the United States and pearls imported from places other than France.

PAR. 5. Guerlain, Inc., is a name of a corporation engaged in France in the manufacture of perfumes, talcum powders, face powders, other cosmetics and toilet articles, jewelry and other articles and in the importing of such products to and into the United States. Guerlain Perfumery Corporation of Delaware is a corporation

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engaged in the United States in the business of selling throughout the United States the products of the aforesaid Guerlain, Inc. The products of said Guerlain, Inc., are well known and are and have been extensively advertised throughout the United States under the name of "Guerlain." The name "Guerlain" as applied to perfumes, talcum powders, face powders, other cosmetics and toilet articles, now and for many years has signified to the purchasing public and to the trade that the products sold under such name or under a name of which "Guerlain" is a part are the products of Guerlain, Inc., and of superior quality. Respondent has no connection with said Guerlain, Inc., nor said Guerlain Perfumery Corporation of Delaware. Its products are inferior to the products of Guerlain, Inc.

PAR. 6. Respondent's aforesaid labelling and designating its perfumes, talcum powders, face powders, other cosmetics and toilet articles as herein set out has the capacity and tendency to mislead and deceive its vendees and many of the purchasing public into the belief that its said perfumes, talcum powders, face powders, other cosmetics and toilet articles are manufactured in Paris, France, and imported into the United States and to purchase said perfumes, talcum powders, face powders, other cosmetics and toilet articles in that belief, when in truth and in fact respondent's said perfumes, talcum powders, face powders, other cosmetics and toilet articles are made in the United States of America from ingredients purchased in the United States of America. Respondent's aforesaid labelling and use of the words "Arthur Guerlain," as set out herein has the capacity and tendency to mislead and deceive its vendees and many of the purchasing public into the belief that its perfumes, talcum powders, face powders, other cosmetics and toilet articles and jewelry and other articles are the products of aforesaid Guerlain, Inc., and imported into the United States. Respondent's said labelling has the capacity and tendency to mislead and deceive its vendees and many of the purchasing public into the belief that its said pearls and other jewelry are the products of said Guerlain, Inc., and are imported from France.

PAR. 7. Further, respondent's said labelling and designating of its perfumes, talcum powders, face powders, other cosmetics and toilet articles as set out herein, places in the hands of aforesaid dealer and peddler vendees the instrument and means whereby said peddlers and dealers may commit fraud upon a substantial portion of the purchasing public by enabling said dealers and peddlers to represent, offer for sale and sell said perfumes, talcum powders, face powders, other cosmetics and toilet articles as manufactured in Paris, France;

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further, respondent's said corporate name and labelling as set out herein place in the hands of its aforesaid dealer and peddler vendees the instrument and means whereby said dealers and peddlers may commit fraud upon a substantial portion of the purchasing public by enabling said dealers and peddlers to represent, offer for sale, and sell respondent's said perfumes, talcum powders, face powders, other cosmetics and toilet articles, jewelry and other articles as the products of Guerlain, Inc. Further, respondent's said labelling as set out herein places in the hands of its aforesaid dealer and peddler vendees the instrument and means whereby said dealers and peddlers may commit fraud upon a substantial portion of the purchasing public by enabling said dealers and peddlers to represent, offer for sale and sell respondent's pearls and jewelry as imported from Paris, France.

PAR. 8. There are among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell perfumes, talcum powders, face powders, other cosmetics and toilet articles manufactured in Paris, France, and imported into the United States and who rightfully and truthfully represent said perfumes, talcum powders, face powders, other cosmetics and toilet articles to be such. There are others of said competitors who deal in and sell perfumes, talcum powders, other cosmetics and toilet articles manufactured in the United States from essential ingredients purchased in the United States and who in no manner represent their said perfumes to be manufactured in Paris, France. There are others of said competitors who deal in and sell perfumes, the essential ingredients of which are manufactured in Paris, France, and imported by such competitors into the United States and to rightfully and truthfully represent such perfumes, talcum powders, face powders, other cosmetics and toilet articles to be such. There are also among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell pearls and jewelry imported into the United States from France and who rightfully and truthfully represent said pearls and jewelry to be such. There are others of said competitors, who deal in and sell jewelry manufactured in the United States and pearls not imported from France and who in no manner represent their said jewelry to be manufactured in Paris, France, nor their pearls to be imported into the United States from Paris, France. There are also among such competitors manufacturers and dealers who do not by their labels or by their corporate name mislead or deceive their vendees or the purchasing public into believing that the articles in which they deal are the products of another manufacturer or dealer. Respondent's acts and practices, all as in this complaint hereinbefore

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set out, tend to divert business from and otherwise injure and prejudice said competitors; thereby substantial competition is injured to a substantial extent.

## CONCLUSION

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 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 its conclusion that respondent, Arthur Guerlin, Inc., 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 hereby ordered*, That the respondent, Arthur Guerlin, Inc., its representatives, agents, servants, employees, and successors forthwith cease and desist from:

(a) Using directly or indirectly the word "Paris" or any other word, signifying French origin, on labels, tags or containers of or in advertising of perfumes, talcum powders, face powders, other cosmetics, toilet articles, pearls, jewelry, or any of the articles offered for sale, shipped or sold in interstate commerce, or in connection with the offering for sale thereof in interstate commerce, unless such perfumes, talcum powders, face powders, other cosmetics, toilet articles, and other articles be manufactured or compounded in Paris, France, or in France, and unless such jewelry be manufactured in France and unless such pearls be imported from Paris, France, or from France; and from in any other way labelling and designating its perfumes, talcum powders, face powders, other cosmetics, toilet articles, pearls, jewelry or other articles, sold, advertised, offered for sale or shipped by it in interstate commerce as being manufactured in, compounded in or imported from Paris, France, or from France, unless such perfumes, talcum powders, face powders, other cosmetics and toilet articles, pearls, jewelry and other articles be manufactured in or compounded in Paris, France, or in France, or be imported from Paris, France, or from France;

(b) Using, in interstate commerce, as a part of its corporate name, or on the labels or containers of products advertised, offered for sale or shipped by it, in interstate commerce, or in any other way in interstate commerce, the word "Guerlin" or any other word similar to Guerlin, unless it plainly appears in immediate connection therewith that respondent Arthur Guerlin, Inc., is not connected in any way with the original Guerlain, Guerlain Perfumery Corporation of Delaware, nor with Guerlain, Inc.

*It is now hereby further ordered,* That the said respondent, Arthur Guerlin, Inc., 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.

IN THE MATTER OF  
LOUIS FARBER, TRADING AS FARBER BROS.

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

*Docket 2024. Complaint, Apr. 1, 1932—Decision, Oct. 10, 1932*

Where an individual engaged in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware, and other hollow ware and clocks and other novelty jewelry, and in the sale and distribution thereof to wholesale and retail dealers, adopted and used the trade name "Silvercraft" for his said products and featured the same in his advertisements and in catalogs, circulars, etc., and stamped and branded dials and backs of clocks and other products which neither contained silver nor were silver plated, but resembled silver in appearance, "Silvercraft"; with capacity and tendency to mislead and deceive purchasing public into believing said articles to contain some silver or to be silver plated, and induce the purchase thereof in reliance on such erroneous belief and divert trade from and otherwise injure 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.

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 manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware, and other hollow ware and clocks and novelty jewelry, and in the sale of said products to wholesale and retail dealers, and with factory and principal place of business in New York City, with using misleading trade name, advertising falsely or 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.

Respondent, as charged, employs and features as a trade name for his products, the word "Silvercraft", displaying said word prominently in advertising, advertising matter, catalogs, circulars, folders, letterheads, and business cards (many of which are used by retailers as an aid in selling the products to the consuming public), and causes said products to be stamped and branded with the afore-said word, notwithstanding fact that many of the products so

advertised, sold, distributed, stamped and branded contain no silver and are not silver plated.<sup>1</sup>

“The false, misleading, and deceptive statements and representations and stamping hereinbefore referred to,” as alleged, “have the capacity and tendency to deceive and to mislead the consuming public into the belief that the products advertised for sale and sold with the word ‘Silvercraft’ stamped thereon are composed of silver or are silver plated,” and “use by respondent of the false, misleading, and deceptive statements and representations and stamping as heretofore set forth constitutes practices or methods of competition which tend to and do prejudice and injure the public and unfairly divert trade from and otherwise prejudice and injure respondent’s competitors”; 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 (38 Stat. 717) the Federal Trade Commission issued and served a complaint upon the respondent, Louis Farber, trading as Farber Bros., charging him 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, a stipulation as to the facts in lieu of testimony was entered into by the respondent and by counsel for the Federal Trade Commission and approved and accepted by the Federal Trade Commission as a stipulation of facts in lieu of testimony. Thereupon, this proceeding came on for final hearing on the brief of counsel for the Commission, counsel for respondent having

<sup>1</sup>The complaint alleges use of said word by respondent in catalogs, circulars, etc., as follows:

- (a) **“ SILVERCRAFT**  
Dependability—Durability  
Sterling Quality
- (b) “ \* \* \* Today the House of Silvercraft is nationally known as being the leading manufacturer of quality ‘Silver Plated Hollow Ware.’
- (c) “ Each piece of Silvercraft Hollow Ware bears our imprint, and can be sold with a positive assurance that quality has been the first consideration in its manufacture.
- (d) “ \* \* \* In the manufacture of articles having the Silvercraft quality trade mark nickel silver is the base metal used.
- (e) **“ Futura**  
The Hollow Ware of Tomorrow  
It Will Not Tarnish  
By the Makers of Silvercraft
- (f) **“At Last! FUTURA**  
The Hollow Ware of Tomorrow

A silverlike tarnish-proof ‘butler’ finish hollow ware that fits perfectly into any silver table service . . .”

## Findings

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waived the filing of brief and the presentation of 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. Louis Farber is an individual trading under the name and style of Farber Bros., with his factory and principal place of business located in the city of New York, in the State of New York. He is now and for more than one year last past has been engaged in the manufacture of silver-plated hollow ware, chromium-plated hollow ware, pewter hollow ware and other hollow ware, and clocks and novelty jewelry, and in the sale and distribution thereof in commerce between and among the various States of the United States, causing his said products when sold to be shipped from his place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York.

In the course and conduct of his business, Louis Farber was at all times herein referred to in competition with other individuals, and with firms, partnerships, and corporations engaged in the manufacture and in the sale and distribution in interstate commerce of similar products. Respondent confines the sale of his said products to wholesale dealers and to retail dealers and does not sell direct to the consuming public.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent adopted as and for the trade name of his products the word "silvercraft", and caused said word to appear prominently displayed in his advertisements and advertising matter distributed in interstate commerce, including catalogs, circulars, folders, letterheads, and business cards, many of which are to be used and are used by retail dealers as an aid in selling respondent's products to the consuming public.

PAR. 3. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent has caused catalogs, circulars, folders, letterheads, and business cards to be published and has distributed and caused to be distributed such catalogs, circulars, folders, letterheads, and business cards to retail dealers and to the consuming public. Such catalogs, circulars, folders, letterheads, and business cards are to be used and are used by retail dealers and by respondent as an aid in selling respondent's products to the consuming public.



PAR. 4. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused his products to be stamped and branded with the word "silvercraft", and so stamped and branded respondent offered for sale and sold and distributed said products to purchasers thereof located in various States of the United States other than the State of New York. The said products, so stamped and branded "silvercraft", are subsequently offered for sale and sold by retail dealers who have purchased them from respondent or wholesale dealers, to the consuming public.

PAR. 5. Many of the said products so advertised, sold, and distributed and stamped and branded with the word "silvercraft" contain no silver and are not silver plated, but resemble silver in appearance.

PAR. 6. The use of the unqualified word "silvercraft" by respondent as a stamp or label on hollow ware containing no silver and not being silver plated but resembling silver in appearance has the capacity and tendency to deceive and mislead the purchasing public into the belief that the said hollow ware so stamped or labeled is silver or is silver plated.

PAR. 7. Respondent has labeled certain of his clocks with the word "Silvercraft" or the unqualified words "Silvercraft Alarm", such words being etched on the dial thereof. On the back of such clocks is stamped the word "Silvercraft." The frame, stand and back of such clocks are composed of a metal other than silver and not being silver plated, but resembling silver in appearance. The said clocks contain no silver and are not silver plated.

PAR. 8. The use of the unqualified word "Silvercraft" or of the unqualified phrase "Silvercraft Alarm" by respondent as a stamp or label on clocks containing no silver, and not being silver plated, but having frames, stands or backs which resemble silver in appearance, has the capacity and tendency to deceive and mislead the purchasing public into the belief that certain portions of said clocks so stamped or labeled contain silver or are silver plated.

PAR. 9. Respondent has stamped and branded certain of his toilet ware, candy boxes and sandwich trays with the word "Silvercraft." The said toilet ware, candy boxes and sandwich trays are gold plated and contain no silver and are not silver plated.

PAR. 10. Respondent has labeled certain of his pewter hollow ware and pewter novelties with the word "Silvercraft" accompanied by the word "pewter" in letters equally as large and conspicuous. The said pewter hollow ware and pewter novelties contain no silver and are not silver plated.

PAR. 11. Respondent has not since prior to April 1, 1932, the date of issuance of the complaint herein, stamped or labeled any

of his chromium-plated hollow ware with the word "Silvercraft". The chromium-plated hollow ware he is now manufacturing is stamped and labeled "Krome-Kraft."

PAR. 12. The acts and things done by respondent in representing, designating, and describing his merchandise composed of a metal resembling silver in appearance but containing no silver, and not being silver plated, as "Silvercraft", unqualified by any word or words to designate the metal or metals of which such merchandise is composed as hereinabove set forth, have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that such merchandise resembling silver in appearance, but containing no silver and not being silver plated and stamped or labeled with the unqualified word "Silvercraft", contains some silver or is silver plated, and tends to induce the purchase of respondent's products in reliance on such erroneous belief and to divert trade from and otherwise injure competitors of respondent.

#### CONCLUSION

The said practices of respondent as described in paragraph 12 of the foregoing findings and 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 the respondent thereto, the stipulation entered into in lieu of testimony and the brief of counsel for the Commission, the filing of brief and the presentation of oral argument having been waived 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, Louis Farber, his officers, agents, representatives, and employees in connection with the adver-

## Order

tising and offering for sale and sale in commerce between and among the various States of the United States of hollow ware, clocks, and novelty jewelry offered for sale and sold by respondent do cease and desist from directly or indirectly:

(1) Labeling, stamping, or advertising hollow ware resembling silver in appearance or clocks having frames, stands, or backs resembling silver in appearance but containing no silver and not being silver plated, as "Silvercraft", unless the word "Silvercraft" is accompanied by a word or words equally conspicuous in type and position, stating the metal or material of which the said hollow ware or clock frames, stands or backs are composed.

*It is further ordered,* That the respondent Louis Farber 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
**THE SINCLAIR MANUFACTURING CO. AND PACKARD  
 SHIRT MANUFACTURING 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 2062. Complaint, July 20, 1932—Decision, Oct. 10, 1932*

Where a corporation engaged in sale of men's shirts not made by it, directly to consuming public through house-to-house canvassers.

- (a) Included word "Manufacturing" in its corporate name and represented itself through booklets and other advertising and verbally through its salesmen as a manufacturer making the shirts sold by it, causing depictions of large buildings, with its name thereon conspicuously to be exhibited to purchasers and prospective purchasers as its factories, and also photographs of purported interiors of said buildings, showing shirt-manufacturing operations in process;
- (b) Represented in connection therewith that it was the exclusive manufacturer of the shirts in question, and that "A large factory output" made it possible for it to offer "the greatest assortment of exclusive patterns and styles" to the members of the public, the users and wearers thereof, "at factory prices, the lowest prices possible", and that purchasers in buying shirts in question from it were thereby saved a middleman's profit; and

Where said corporation, and a manufacturing concern, maker of the shirts in question, which were ready made, and not made to order, in selling same directly to the consuming public through canvassers as aforesaid,

- (c) Represented that said shirts would be tailored or custom made, or made to the measure of the particular purchaser and supplied their salesmen and agents with order blanks with spaces for recording various measurements of the respective purchasers as purportedly necessary for making to order the shirts in question, and so constructed and worded as to signify and imply to the purchasers to whom they were displayed, that shirts purchased would be made to order in accordance with the measurements of the particular purchaser;

With tendency and capacity to deceive and mislead purchasing public into believing that same were made to their order and measure, and that said corporation was the manufacturer thereof and purchaser from it saved a middleman's profit, and with effect of causing members of the public to buy shirts from them in reliance on such erroneous belief in preference to competitive products and thereby divert trade from them to competitors, 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 constituted unfair methods of competition.

*Mr. Edward E. Reardon* 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, Sinclair Manufacturing Co., an Illinois corporation engaged in the sale of men's clothing, including shirts, underwear and neckwear, and with place of business in Terre Haute, Ind., and respondent Packard Shirt Manufacturing Co., an Indiana corporation engaged in the manufacture and sale of the aforesaid products, and with place of business also in said city, with misrepresenting nature of manufacture of product, and misrepresenting business status or advantages, and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting use of unfair methods of competition in interstate commerce.

Respondents, engaged in the sale of the products made by said respondent, Packard Shirt Manufacturing Co., through agents and salesmen, as charged, make it their practice to represent shirts ordered by purchasers, and furnished to them by respondents in pursuance of orders given to their agents and salesmen, will be tailored or custom-made, i.e., made to the measure of the purchaser, and furnish their said salesmen and agents, for their use, order blanks with spaces for recording the various measurements purportedly necessary for making custom-made shirts, and so constructed and worded as to signify and imply to purchasers that shirts ordered by them will be made to their order in accordance with their measurements; the fact being that the shirts in question, made by aforesaid respondent, Packard Shirt Manufacturing Co., are not tailored or custom-made shirts, but "ready-made" shirts in various standard sizes for stock.

Respondent, Sinclair Manufacturing Co., as charged, makes it its practice to represent in booklets and other advertising and verbally through its agents and salesmen, that it is a manufacturing company and manufacturer of the shirts sold by it, causing photographs of large buildings to be exhibited to purchasers and prospective purchasers as its factory or factories, with large signs displayed in the photographs at the top of the buildings, with its name thereon in large letters, and setting forth in circulars or folders, depictions of interiors showing employees engaged in certain shirt manufacturing operations, together with statements describing it as "exclusive manufacturers" of the shirts sold by it, emphasizing its "large factory output" as making it possible for it "to offer the greatest assortment of exclusive patterns and styles", with the resulting advantage to its agents of selling to the people in their communities, "the highest quality tailored shirts, with just the right neckband, sleeve length, and chest measurement", together with choice of "this great factory's output of materials and fabrics of every description \* \* \* at factory prices, the lowest prices

possible", and other statements of similar tenor emphasizes such prices and the saving to the purchaser of the middleman's profit; notwithstanding the fact that such company is not and was not the manufacturer of shirts or of any other products.

"The representation contained in the word 'manufacturing', in the corporate name of the respondent, the Sinclair Manufacturing Co., to the effect that said respondent was engaged in manufacturing and that shirts or other products of said respondent, which were sold by it were manufactured by the Sinclair Manufacturing Co., and the statements and representations of the said respondent, above set forth other than contained in the corporate name of said respondent, to the effect that the shirts or any of them offered for sale and sold by the said respondent were manufactured by the Sinclair Manufacturing Co. and the statements made or caused to be made by the respondents, respectively, that the shirts sold by them were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, were each and all of such representations and statements untrue and had the tendency and capacity to deceive and mislead said members of the public, purchasers of the said shirts into the belief that the respondent, the Sinclair Manufacturing Co., was engaged in manufacturing and was the manufacturer of the shirts sold by it, that the shirts sold by the respondents were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, and that in purchasing the shirts sold by the Sinclair Manufacturing Co. in preference to shirts sold by said respondent's competitors, the purchaser saved a middleman's profit", and "said representations and statements had the further tendency and capacity to cause and did cause members of the public relying on such belief to purchase shirts for use and wear from the respondents, respectively, in preference to shirts sold by respondents' competitors and trade was thereby diverted from respondents' competitors to the respondents"; 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 its complaint against the respondents, the Sinclair Manufacturing Co. and Packard Shirt Manufacturing Co.

charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Pursuant to the provisions of said act the Commission served its complaint upon each of the respondents on July 22, 1932, with notice of hearing on August 26, 1932, on the charges set forth in the complaint, together with a copy of the rules of practice adopted by the Commission with respect to the time within which answer is required to be made by a respondent after service of a complaint and with respect to failure of a respondent to appear or to file answer thereto.

The time of the respondents, respectively, to appear and to file answer to the complaint in accordance with the said rules of practice expired on August 26, 1932, and the respondents, respectively, having failed to appear and to answer the complaint and no extension of time to appear and to answer having been requested or granted and the respondents, respectively, being in default for want of appearance and answer, and the Commission having duly considered the record and being fully advised in the premises, now 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, the Sinclair Manufacturing Co., was organized as a corporation under the laws of the State of Illinois on December 27, 1923, under the name Sinclair Shirt Co. The name of the said respondent was changed to the Sinclair Manufacturing Co. on February 23, 1924. The said respondent has a place of business in Terre Haute, Ind.

PAR. 2. The respondent, Packard Shirt Manufacturing Co., was organized as a corporation under the laws of the State of Indiana on March 8, 1929, and at all times since its organization it has had and now has a place of business in Terre Haute, Ind.

PAR. 3. The respondent, Packard Shirt Manufacturing Co., is and has been since on or about March 8, 1929, engaged in the manufacture of men's clothing, including shirts, underwear and neckwear, and since on or about the last-mentioned date both of the respondents are and have been engaged in the sale and distribution of the products of the Packard Shirt Manufacturing Co. throughout various States of the United States.

PAR. 4. The respondents are and have been at all times since on or about March 8, 1929, engaged in the sale of the above-mentioned products to members of the public residing in States other than Indiana and the respondents have caused the products when so sold

by them to be transported from the respondents' places of business in Indiana or from the State of origin of the shipment to, into and through States other than Indiana or the State of origin of the shipment to the members of the public, the purchasers of the said products.

PAR. 5. During all the times above mentioned other individuals, firms, and corporations hereinafter referred to as sellers, located in various States of the United States, are and have been engaged in the manufacture and sale of men's clothing, including shirts, underwear and neckwear, to members of the public throughout the United States, purchasers and users thereof, and the sellers, respectively, have caused their products when so sold by them to be transported from the State of the seller or from the State of origin of the shipment to, into and through other States to the purchasers.

PAR. 6. During all the times since on or about March 8, 1929, the respondents have been and now are, respectively, in competition in interstate commerce in the sale of the products made by the Packard Shirt Manufacturing Co., including the shirts hereinafter mentioned and referred to, with the other individuals, firms and corporations, the sellers mentioned and referred to in the preceding paragraph hereof.

PAR. 7. During all the times since on or about March 8, 1929, the respondents, respectively, have caused the said products of the respondent Packard Shirt Manufacturing Co., including the shirts mentioned and referred to herein, to be sold through canvassing salesmen or agents who have personally solicited and received orders for the products from members of the public located in States other than Indiana or the State of origin of the shipment, purchasers, and users thereof. Orders so solicited and received by respondents' salesmen or agents are and have been forwarded by them to the respondents who have thereupon, respectively, caused the articles of clothing so ordered to be transported in interstate commerce as above set forth and delivered to the purchasers.

PAR. 8. It is and has been, during the times since on or about March 8, 1929, the practice of respondents, respectively, in soliciting the orders above mentioned for the said products through their agents and salesmen, to represent to purchasers and prospective purchasers that the shirts ordered by the purchasers and furnished to them by the respondents, respectively, in pursuance of orders given to the respondents' agents and salesmen would be tailored or custom made, or made to the measure of the purchasers, and the respondents, respectively, furnish and have furnished to their salesmen and agents for their use in taking orders, order blanks with spaces provided for



recording among other things various measurements of the respective purchasers of respondents' shirts purporting to be necessary measurements for making tailored or custom made shirts and such order blanks have been and are being used by their agents and salesmen in soliciting and receiving orders for shirts made by the Packard Shirt Manufacturing Co. and have been and are being displayed by such agents and salesmen to purchasers and prospective purchasers. The said order blanks are so constructed and worded as to signify and imply to said purchasers that the shirts ordered by them from the respondents would be made to their order in accordance with the measurements of the purchasers.

The shirts sold by respondents, respectively, as above set forth have not been tailored or custom made shirts, nor have they been made to the measure or order of the said purchasers, but they are and have been shirts made in various standard sizes for stock, commonly known as ready-made shirts, by the Packard Shirt Manufacturing Co.

PAR. 9. In the sale of shirts by the Sinclair Manufacturing Co. as set forth above, it is and has been the practice of the said respondent to represent in booklets and in other printed forms of advertising and verbally through its agents and salesmen that the Sinclair Manufacturing Co. is a manufacturing company and was the manufacturer of the shirts sold by it.

Among other such representations during the said times the said respondent caused photographs of certain large buildings to be exhibited to purchasers and prospective purchasers as the factory or factories of the Sinclair Manufacturing Co., and caused large signs to be represented in the photographs at the top of the buildings extending the entire length and width of the buildings with the name, the Sinclair Manufacturing Co. thereon, printed in large letters.

In circulars or folders exhibited to purchasers containing reproductions of the above photographs the said respondent caused other photographs to be displayed, purporting to be photographs of interior parts of said buildings, showing factory employees engaged in certain manufacturing operations in the manufacture of shirts, together with statements in connection therewith such as the following:

The Sinclair Manufacturing Co. are the exclusive manufacturers of the celebrated Sinclair Comfort Built Shirt;

A large factory output makes it possible for Sinclair to offer the greatest assortment of exclusive patterns and styles;

Suppose we placed our big factory in your town, and gave you the exclusive privilege of selling to the people of your community the highest quality tailored shirts, with just the right neckband, sleeve length, and chest measurement. Then think of giving your customers the choice of this great factory's output of

materials and fabrics of every description \* \* \* If you were able to offer these exceptional values to your customers at factory prices, the lowest prices possible, without an investment of a single penny on your part, do you think that you could make good?

and other similar statements to the effect that the shirts sold by the Sinclair Manufacturing Co. were offered for sale and sold by the said respondent to the members of the public, the users and wearers thereof, at factory prices, and to the effect that the purchasers in buying the said shirts from the Sinclair Manufacturing Co. thereby saved a middleman's profit.

PAR. 10. The respondent, the Sinclair Manufacturing Co., is not and it has not been during the times above mentioned and referred to engaged in the manufacture of shirts or of any other products.

The representation contained in the word "manufacturing" in the corporate name of the respondent, the Sinclair Manufacturing Co., to the effect that said respondent was engaged in manufacturing and that shirts or other products of said respondent, which were sold by it were manufactured by the Sinclair Manufacturing Co., and the statements and representations of the said respondent, above set forth other than contained in the corporate name of said respondent to the effect that the shirts or any of them offered for sale and sold by the said respondent were manufactured by the Sinclair Manufacturing Co. and the statements made or caused to be made by the respondents, respectively, that the shirts sold by them were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, were each and all of such representations and statements untrue and had the tendency and capacity to deceive and mislead said members of the public, purchasers of the said shirts into the belief that the respondent, the Sinclair Manufacturing Co., was engaged in manufacturing and was the manufacturer of the shirts sold by it, that the shirts sold by the respondents were tailored and custom made shirts or shirts made to the order and measure of the member of the public purchasing the same for use and wear, and that in purchasing the shirts sold by the Sinclair Manufacturing Co. in preference to shirts sold by said respondent's competitors, the purchaser saved a middleman's profit.

The said representations and statements had the further tendency and capacity to cause and did cause members of the public relying on such belief to purchase shirts for use and wear from the respondents, respectively, in preference to shirts sold by respondents' competitors and trade was thereby diverted from respondents' competitors to the respondents.

## Order

## CONCLUSION

PAR. 11. 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 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 and considered by the Federal Trade Commission upon the record, 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, the Sinclair Manufacturing Co. and Packard Shirt Manufacturing Co., and each of them, their agents, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of shirts or other articles of men's clothing, do cease and desist—

1. From using the word "manufacturing" or word of similar meaning as a part of or in the name of the respondent, the Sinclair Manufacturing Co.; and

2. From representing to purchasers or prospective purchasers, directly or indirectly, by means of signs or otherwise, that any building occupied by the said respondent, the Sinclair Manufacturing Co., is a factory and operated as such by said respondent, or that said respondent is a manufacturer of shirts or other articles of men's clothing offered for sale unless or until such representations are true in fact.

3. From representing that the shirts sold by respondents are tailored or custom made shirts, made to the order and measure of the purchaser, when in fact the shirts sold by respondents are what are known as "ready made" or made for stock in standard sizes to be later offered for sale and sold, and are not shirts made to fill an order previously obtained from a purchaser in accordance with measurements of the purchaser taken before the shirts ordered are manufactured.

4. From representing to purchasers or prospective purchasers, directly or indirectly, that in purchasing shirts or other articles of men's clothing sold by the Sinclair Manufacturing Co. in prefer-

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ence to shirts sold by competitors, that the purchasers are buying the same from a manufacturer and are thereby saving a middleman's profit, unless and until the shirts and other articles of men's clothing being so represented and sold are actually manufactured by the said respondent.

*It is further ordered,* That the respondents, the Sinclair Manufacturing Co. and Packard Shirt Manufacturing Co. shall within 30 days after the service of this order file with the Commission a report in writing, setting forth in detail the manner and form, respectively, in which they have complied with this order to cease and desist.

## Complaint

IN THE MATTER OF  
 HAVATAMPA CIGAR COMPANY

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

*Docket 1465. Complaint, June 3, 1927—Order Oct. 11, 1932*

Consent order requiring respondent, its officers, etc., to cease and desist in connection with sale and distribution of cigars in interstate commerce, from (1) using word "Cuba", in brand name or designation "Hoyo de Cuba", for cigars not composed entirely, or in substantial amount, of Cuban tobacco, unless accompanied by equally conspicuous explanatory matter, respectively covering the aforesaid circumstances, as in detail set forth; (2) applying words "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", "Mild Habana Cigar", or any other words of similar import to cigars not composed wholly of Havana or Cuban tobacco; or (3) applying to any cigars not composed of Havana or Cuban tobacco in whole or in part, any other word, name, etc., implying such composition.

*Mr. Henry Miller* for the Commission.

*McMullen, Worth & Draper*, of Tampa, Fla., 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 Havatampa Cigar Co., a 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, Havatampa Cigar Co., is a corporation organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business in the city of Tampa, in said State. It is, and for many years last past has been, engaged in the business of manufacturing, selling, and distributing cigars throughout the United States to wholesale and retail dealers and to the consuming public. Respondent causes said cigars when so sold to be transported in commerce from its said place of business in the city of Tampa, Fla., through and into other States of the United States to said vendees at their respective points of location or residence in said other States; and in so carrying on and conducting its said business respondent is and at all times hereinafter mentioned has been engaged in interstate commerce and in

direct active competition with many individuals, partnerships and other corporations also engaged in the sale and transportation of cigars in commerce between and among the several States of the United States.

PAR. 2. For many years prior to the date hereof tobacco and cigars produced on the Island of Cuba have been and are sold and consumed by the trade and public throughout the United States, and said tobacco and cigars produced in Cuba have been and are well and favorably known to, and preferred and in great demand by, the trade and consuming public throughout the United States. For many years last past many among the trade and the consuming public throughout the United States have preferred and still prefer to purchase cigars made in Cuba or cigars composed in whole or in greater part of said Cuban tobacco, and have considered and still consider such cigars to be superior in quality or value to cigars produced elsewhere than in Cuba and to cigars composed in whole or in greater part of tobacco grown elsewhere than on the Island of Cuba. Said tobacco grown in Cuba is and has been since time immemorial generally known, referred to and designated in the trade and by the consuming public as "Havana" or "Habana" tobacco, and the cigars composed wholly of such tobacco as "Havana" or "Habana" cigars.

PAR. 3. In the course and conduct of its said business, respondent sells and distributes large quantities of its cigars from its place of business in Tampa, Fla., to the trade and consuming public throughout the several States of the United States under the description, designation, and brand name of "Hoyo de Cuba." Said so-called "Hoyo de Cuba" cigars as and when so sold and distributed by respondent are packed by it in boxes or other containers upon which respondent has caused to be affixed in sundry places and in large prominent and conspicuous lettering, the words or phrases "Hoyo de Cuba", "Havana", "Habana", "Mild Havana", "Mild Habana" and "Mild Havana Cigar" and upon each of said so-called "Hoyo de Cuba" cigars respondent has caused to be affixed a paper band or label bearing the words or phrases "Hoyo de Cuba" in large and conspicuous lettering. In the regular course of trade and as intended by respondent, said so-called "Hoyo de Cuba" cigars are offered for sale, displayed and resold by respondent's dealer purchasers and other dealers to the purchasing and consuming public as and under the designations, descriptions, brands, and labels placed thereon by respondent as set forth above. Further, respondent advertises, represents, and describes its said so-called "Hoyo de Cuba"

cigars to the trade and consuming public as "Hoyo de Cuba", "Havana", "Habana", "Mild Havana", "Mild Habana", and "Mild Havana Cigar" through and by means of magazine and newspaper advertisements, placards and circular letters, leaflets and similar trade literature published and circulated by it among the purchasing and consuming public of the United States.

PAR. 4. The use by respondent of the words or phrases "Hoyo de Cuba", "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", alone or in conjunction with each other, in designating, branding, advertising or describing said so-called "Hoyo de Cuba" cigars, as set forth in paragraph 3 hereof, is false and misleading, and is calculated, has and had the capacity and tendency to and does mislead and deceive many among the trade and many members of the consuming public into the erroneous belief that said so-called "Hoyo de Cuba" cigars are composed wholly of tobacco grown on the Island of Cuba or that the greater part of said cigar is tobacco which has been grown on the Island of Cuba; and thereby cause purchasers to purchase said cigars in such erroneous belief. In truth and in fact said so-called "Hoyo de Cuba" cigars manufactured, sold and distributed by respondent, as aforesaid, are not composed in whole nor in part of tobacco grown on the Island of Cuba or Havana or Habana tobacco, but the whole and greater part thereof is composed of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are many competitors of respondent referred to in paragraph 1 hereof who as such sell and distribute cigars composed wholly of Cuban or Havana tobacco or tobacco grown on the Island of Cuba and who rightfully and truthfully represent their cigars to be so composed. There are also many of said competitors who as such sell and distribute cigars made in part of said Cuban or Havana tobacco and in part of tobacco grown elsewhere than on the Island of Cuba and who in no wise represent that their said cigars are composed wholly of said Cuban or Havana tobacco. Further, there are also many of said competitors of respondent selling and distributing in competition with respondent certain cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba and who in no wise represent that their said cigars contain Cuban or Havana tobacco. Respondent's acts and practices in connection with the sale and distribution of its so-called "Hoyo de Cuba" cigars as hereinbefore set forth tend to and do divert trade from, and otherwise injure the business of said competitors.

PAR. 6. Respondent has engaged in and carried on the acts and practices under the circumstances and conditions and with the effects

and results hereinbefore set forth for more than four months last past.

PAR. 7. 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 proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to Rule III of the Commission's Rule of Practice as amended and revised to July 1, 1932, consents that the Commission may make, enter and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises,

*It is now ordered*, That respondent, Havatampa Cigar Co., its officers, directors, agents, representatives, servants, and employees cease and desist, in connection with or in the course of the sale or distribution of cigars in interstate commerce—

(1) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation "Hoyo de Cuba" for any such cigars which do not contain any substantial amount of Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied or followed by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars do not contain any Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which has been grown in Cuba;

(2) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation "Hoyo de Cuba" for any such cigars which are not composed entirely of Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand name or designation containing the word "Cuba" be immediately accompanied or followed by a



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statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars are not composed wholly of Cuban tobacco or that the cigars contain certain tobacco which has not been grown in Cuba;

(3) From directly or indirectly applying to any such cigars the words "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", "Mild Habana Cigar" or any other word or combination of words of similar import, if and when the cigars are not in fact composed wholly of Havana or Cuban tobacco;

(4) From directly or indirectly applying to any of said cigars any other word, name, designation, statement, assertion, phrase or representation which implies or imports that said cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

*It is further ordered*, That said respondent, Havatampa Cigar Co., shall, within 60 days after the 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 desist hereinabove set forth.

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## IN THE MATTER OF

NEIL M. JONES AND ROBERT D. EMERY, COPARTNERS  
DOING BUSINESS UNDER THE NAME AND STYLE OF  
AMERICAN RADIUM PRODUCTS COMPANY.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1752. Complaint, Jan. 30, 1930—Order, Oct. 29, 1932.*

Consent order requiring respondent individuals to cease and desist from representing that "water drawn from the lined water jar sold by them and heretofore designated 'The Radium Spa' has any therapeutic or curative value for any bodily ailment or disease whatsoever."

*Mr. Eugene W. Burr* 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 Neil M. Jones and Robert D. Emery, copartners doing business under the firm name and style of American Radium Products Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondents, Neil M. Jones and Robert D. Emery, are copartners trading under the name and style of American Radium Products Co., with their principal place of business in the city of Los Angeles, in the State of California. They are engaged in the business of manufacturing, offering for sale and selling to purchasers located in various States of the United States, earthenware water jars, lined with what the said respondents assert to be radium ore, causing such earthenware water jars when sold, to be transported from their place of business in Los Angeles, Calif., into and through other States of the United States to said purchasers at their respective points of location.

PAR. 2. The name which respondents have given to said water jar, by which respondents refer thereto, and under and by which the same is so offered for sale and sold by respondents, is "The Radium-Spa". Respondents assert to the public and to prospective purchasers in their advertising matter hereinafter referred to, and

in their activities, correspondence, statements, representations, and negotiations in relation thereto, that the radium ore with which said water jar is so alleged to be lined, "imparts to any water placed therein, millions of tiny gaseous particles known as radio-activity, in exactly the same manner as nature does herself". The name so given by respondents to said water jar literally means, and is intended by respondents to be taken and accepted as meaning, "the mineral spring, the waters of which have been charged with radio-activity by contact with radium, an intensely radio-active metallic element".

PAR. 3. Respondents assert that water poured into such water jar and permitted to remain therein for as many as twelve hours has imparted to it by said radium ore a degree of radio-activity that makes such water, when drawn out of such jar and consumed by a person in need thereof, a therapeutic agent that is a cure of each and all of many bodily diseases enumerated and set forth by respondents in advertising matter and in statements and representations by respondents otherwise made to the public and prospective purchasers of such water jars.

PAR. 4. In scientific nomenclature relating to radium the following definitions are established and universally accepted and used, to wit:

A millimicrocurie is one one thousandth of one millionth of a curie, or one billionth of a gram.

The term "M. U." refers to Mache Units and 2,700 M. U's equals a microcurie.

One microcurie equals 1,000 millimicrocuries.

A gram is 1/28.3 of an ounce.

PAR. 5. In their said business enterprise, and in the procurement of purchasers for said water jars so being offered for sale and sold by respondents, respondents are in competition with other persons, firms, associations, and corporations who are engaged in offering for sale and selling in interstate commerce their products as and for remedial agents with therapeutic value in the treatment and cure of one or more of said many diseases for which respondents claim the water drawn from such water jar to be of therapeutic value as a remedy and cure. At various points in and throughout the several States of the United States, competitors of respondents above referred to have been, and are, engaged in offering for sale and selling various products as remedial agents of therapeutic value in the treatment and cure of one or more of the diseases hereinabove referred to and hereinafter enumerated, and in causing the same to be transported, through the United States mails or otherwise, from their respective places of business into and through the several States

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of the United States of America to the respective places of residence of the purchasers thereof in such several States.

PAR. 6. In their said business and for the purpose of inducing purchasers to enter into contracts for the purchase of such water jars, and to pay the purchase price thereof, respondents cause advertisements and descriptions of such water jars to be inserted and made accessible to the public and to prospective purchasers, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several parts thereof, and in order blanks and other blanks, in catalogs, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

In such advertisements and descriptions and in said written, mimeographed, or printed matter, respondents make the following statements, representations and promises, referred to, to wit, that:

1. The mystery of "health springs" has been solved. Health spring waters are highly radio-active, and they have therapeutical value in direct proportion to the amount of radio-active emanation in such health springs. All natural waters at their source show radio-activity, but the more noted health springs are many times more radio-active than other springs.

The secrets of the Turkish harem have been revealed. For centuries the famous "Well of Beauty" at Donje Vodne, near Urkub, Turkey, have been guarded as sacred and kept only for the beauties of the Turkish harems.

These favored women actually retained youth and beauty long after others of the same age had become old and wrinkled. After long scientific research the wonderful element responsible for the lasting youth and beauty of the favored harem is known and now made possible for every woman to have. It was found that the only therapeutical difference between the waters of the "Well of Beauty" and any other water was just one—that element was radio-activity.

Elaborate research has since positively determined that the radio-active water of the "Well of Beauty" is successfully duplicated by the Radium-Spa and the results are the same. A few of the findings resulting from these researches are as follows:

- (a) Pimples and blotches disappear.
- (b) The flesh becomes firm.
- (c) The skin becomes velvet soft over the entire body.
- (d) The face fills out and wrinkles disappear.
- (e) The complexion becomes clear and rosy.
- (f) Constipation is relieved and the health in general is much improved.
- (g) Thyroid activity is increased, causing a filling out of scrawny neck and shoulders.
- (h) Unhealthy fat is reduced, while those underweight gain in flesh.
- (i) Rinsing the hair in the water after washing and allowing the hair to dry in the sun without rubbing with a towel makes the hair glossy and like silk. Also in many cases hair which is originally straight becomes naturally curly.

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The Radio-Spa faithfully duplicates the "Well of Beauty" and is now ready for you. It is guaranteed to make any water placed in it radioactive equal in strength to the famous "Well of Beauty" within twelve hours. Just fill it tonight with hydrant water; tomorrow it is ready for use. It lasts forever and now costs but \$30 delivered to you.

2. Radio-active water from the Radium-Spa carries a superabundance of this health-infusing emanation. The water from the Radium-Spa has been proven by tests to possess a radio-activity far in excess of that of natural springs and consequently its biological influences and its health-giving powers greatly exceed similar influences derived from the natural radio-active springs.

3. *The physiological action of radium emanation is:*

- (a) Radium emanation is more soluble in blood than in water.
- (b) Emanation, upon entering the blood stream, almost immediately causes an increase in red corpuscles (soldiers of the body).
- (c) Radium emanation increases the metabolism.
- (d) There is an augmented excretion of uric acid and a solution of sodium biurate.
- (e) Enhances the action of pepsin, pancreatin, rennin and diastase.
- (f) Radium emanation tends to normalize the entire system.
- (g) Radium emanation stimulates the germination of seeds and growth of plants.
- (h) There is a decided rejuvenating effect on glands.
- (i) The cells throughout the body are made more permeable.
- (j) Action of the rays of radium emanation are very beneficial in ridding the blood stream of uric acid.
- (k) Rays have bactericidal action.
- (l) Radium emanation is not a drug or medicine.
- (m) Radium emanation enters every part of the body.
- (n) Radium emanation has a decided ionizing and catalytic action.

4. *Radium emanation is applicable to the following specific physical conditions:*

- |                          |                       |
|--------------------------|-----------------------|
| (a) Arteriosclerosis     | (k) Gout              |
| (b) Anemia               | (l) Insomnia          |
| (c) Asthma               | (m) Menopause         |
| (d) Backward development | (n) Nervous condition |
| (e) Cancer               | (o) Neuralgia         |
| (f) Constipation         | (p) Obesity           |
| (g) Diabetes             | (q) Prostate          |
| (h) Dysmenorrhea         | (r) Rheumatism        |
| (i) Dyspepsia            | (s) Rejuvenation      |
| (j) Goiter               | (t) Neurasthenia      |

5. The following list of diseases shows the wide range of conditions benefited by radio-active water, which demonstrates how radio-active water may be used in the re-establishment of health:

- |                   |                      |
|-------------------|----------------------|
| Acidosis          | Bacterial infections |
| Anemia            | High blood pressure  |
| Arthritis         | Low blood pressure   |
| Arteriosclerosis  | Bright's disease     |
| Asthma            | Catarrhal conditions |
| Auto-intoxication | Constipation         |

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Debility	Kidney troubles
Diabetes	Leucorrhœa
Dyspepsia	Lumbago
Exhaustion	Melancholia
Eye troubles	Menopause disorders
Genital disorders	Menstrual complaints
Goiter	Nervous complaints
Gout	Neuralgia
Hay fever	Neuritis
Heart troubles	Obesity
Impotency	Prostatitis
Insomnia	Sciatica
Indigestion	Skin disorders.

6. Many famous physicians and many other men and women have affirmed in language quoted in such advertising matter that the use of radio-active water including water so drawn from such water jar, has cured many and diverse specifically enumerated diseases, the same being many of the diseases above enumerated, and also serious maladies not so enumerated.

7. The Government of the United States has ascertained and officially declared the great therapeutic or remedial value of radio-active waters from mineral springs as a treatment or cure for many of said diseases.

PAR. 7. The truth and the facts in relation to the subject matter of said statements, representations, and promises so being made by respondents, are as follows:

1. Science has not yet learned with certainty the fact of the therapeutic value of radio-active water, but has discovered its probably therapeutic value in a limited number of cases and within narrow limitations of conditions and effectiveness.

2. Science has demonstrated that water poured into, permitted to remain therein for a period of 12 or 24 hours, and thereafter drawn from a radium emanation generator which yields less than 2,000 millimicrocuries of emanation per litre during each period of 24 hours, has a dosage of radium emanation so small as to have no therapeutic value; and that the use of such water cannot have any degree of effectiveness as a treatment, remedy or cure for any of the above enumerated diseases of any other bodily ailment or disease.

3. Scientific investigations of the actual radium emanation imparted by said water jar, manufactured and sold by respondents, to water poured into, permitted so to remain in, and afterward drawn therefrom, demonstrates that the same is in every case less than 60 millimicrocuries of emanation per litre during any period of 24 hours;

4. Said water jar and any water that may be so poured into the same, permitted to remain therein for 24 hours and thereafter drawn therefrom, in compliance with the instructions therefor given by the respondents, have no therapeutic value whatever and may not by possibility be or become effective as a treatment, remedy or cure of the above enumerated diseases or of any ailment or disease of the human body.

5. Said statements, representations and promises so made by respondents as to the therapeutic value of said water jar and of water so receiving radio emanation by being poured into and permitted to remain therein as recited here-

inabove, are wholly without foundation in fact, such water, treated and used as directed by respondents in their advertising matter, printed instructions and other written, mimeographed or printed matter hereinabove referred to, is not effective as a remedy or cure of any of the physical ailments and diseases hereinabove enumerated.

PAR. 8. The use by respondents of said trade practice and method of competition, to wit, the making and publication of said false, deceptive, and misleading statements, representations and promises as set forth above, has the tendency and capacity to mislead and deceive the public and prospective purchasers, and will probably mislead and deceive the public and prospective purchasers, into the erroneous belief:

1. That such statements, representations and promises are true.
2. That persons suffering from any of the above enumerated physical ailments or diseases may be relieved therefrom and cured thereof by drinking, as so directed by respondents, water poured into, permitted to remain in, and thereafter drawn from, such water jar, all in accordance with directions so given by respondents.

PAR. 9. The use by respondents of said trade practice or method of competition, to wit, the making and publication of said false, deceptive, and misleading statements, representations, and promises as above set forth, has the tendency and capacity to, and probably will, injuriously affect the public, prospective purchasers and the competitors of respondents in the particulars as follows, to wit:

1. To induce the public and prospective purchasers to purchase and pay for said water jar solely on account of said false, deceptive and misleading statements, representations and promises, and for the sake of the said pretended benefits that cannot in fact be realized by such purchasers.

2. To induce prospective purchasers to select, purchase and pay for said water jar so being offered for sale by respondents, in preference to, and to the exclusion of competitive articles being offered for sale by competitors of respondents, solely because of such false, deceptive and misleading statements, representations and promises, and solely in order to receive the particular benefits so promised, but which such purchasers from respondents are not enabled to receive or realize.

3. To divert prospective purchasers from competitors of respondents, solely by the making and publication of such false, deceptive and misleading statements, representations and promises.

PAR. 10. Such acts and practices of the respondents 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 June 30, 1930, issued its complaint against the respondents named in the above-entitled proceeding and caused the same to be served upon said respondents, as required by law, in which complaint the Commission 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 or about February 14 and March 3, 1930, respective respondents filed two certain answers to the charges of the said complaint. Subsequent thereto the Commission appointed an examiner to receive evidence in support of the said complaint and in support of the said respective answers. Thereafter on July 6, 1932, respondents jointly applied to the Commission for leave to withdraw their said respective answers and for leave to file a substitute answer, submitted with their said application whereby, pursuant to Rule III, subdivision 2 of the Rules of Practice of the Commission, they waived hearing on the charges set forth in the said complaint and gave their consent that the Commission make, enter and serve upon the respondents an order to cease and desist from the violations of law alleged in the said complaint. By order of July 15, 1932, leave as aforesaid was granted by the Commission and the said substitute answer was caused to be filed.

*It is now ordered,* That the respondents above named shall cease and desist from representing, directly or indirectly, either orally or in writing, that water drawn from the lined water jar sold by them and heretofore designated "The Radium Spa" has any thereapeutic or curative value for any bodily ailment or disease whatsoever.

*It is further ordered,* That respondents, within 60 days after the service upon them of this order shall 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 hereinabove set forth.



## Complaint

IN THE MATTER OF  
ROCHESTER NURSERIES, 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 1949. Complaint, May 8, 1931—Decision, Oct. 31, 1932*

Where a corporation engaged as a sales organization or jobbing concern, for a short period and with small capital, in business of selling and distributing nursery stock, in which permanence, stability, and responsibility are of peculiar importance to customers, and neither owning any nursery nor growing stock dealt in, but purchasing same, under contract, from a nursery which it neither owned directly nor indirectly,

Included word "Nursery" in its corporate name, and in its advertising matter in catalogs, pamphlets, newspapers, etc., referring to its "large nurseries", "farms", and "most careful and scientific management", and "well earned reputation for stock of the highest quality", and making such statements as that it had "had a lot of experience in growing trees and plants" and knew that it was "poor economy to grow stock carelessly or to sacrifice quality", and describing the careful growing, digging, and handling of its stock, its 44 years of nursery stock merchandising and shipping experience, with its own packing houses and organization, and its asserted competitive advantages over such concerns as mail order houses, department stores, etc., "not in position to furnish trees and plants as well taken care of and freshly shipped as can be, being strictly and exclusively in the nursery business—growing the stock we send out in the open field, in a soil and climate adapted to its proper development", etc.;

With capacity and tendency to mislead and deceive purchasers into believing that it actually grew or propagated the nursery products sold and distributed by it, and owned, operated, and controlled nurseries and farms on which aforesaid products were grown, and that it was a large concern long in the nursery business, and to induce purchase of its stock and divert trade from and otherwise injure competitors, including growers of the nursery stocks sold by them:

*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.

*Lewis, Bown, Johnson & Tobin*, of Rochester, 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, a New York corporation engaged in the purchase of fruit and ornamental nursery stock and in the sale thereof to purchasers in various States, and with principal office and place of business in

Rochester, with using misleading corporate name, and misrepresenting business status and advantages, 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 aforesaid and neither owning, operating nor controlling a nursery on which the nursery stock dealt in by it as aforesaid is grown, but filling orders from products grown on properties or nurseries which it neither owns, operates, nor controls, employs its corporate name containing the word "nursery", and represents in catalogs, pamphlets, other publications, newspaper advertisements and advertising matter, that it is an old concern, the biggest and strongest organization in the world devoted to the business concerned, its products are grown on its farms under the most careful and scientific management, it ships all orders direct to customer from nursery,<sup>1</sup> and other statements of similar tenor, the facts being that it was not a large concern, and did not grow stock dealt in by it on properties, farms or nurseries which it owned or controlled.

"The designation 'nurseries' in the corporate name of respondent", as alleged, "and the above and foregoing representations and statements made by it by means of which it has offered for sale, sold and sells its products, as above set forth, had and have the capacity and tendency to mislead and deceive, and did and do mislead and deceive the purchasing public into the belief that the said Rochester Nurseries, Inc., actually grows or propagates the nursery products sold and distributed by it in interstate commerce, and that it owns, operates and controls nurseries, farms or properties in or on which the said nursery products sold and distributed by it in interstate commerce are grown, and that it is a large concern and has been engaged in the nursery business for many years, when such are not the facts; and have tended to induce, and have induced the purchase of respondent's nursery stock in reliance upon such erroneous belief, and have tended to divert and have diverted trade from,

<sup>1</sup> The complaint alleged the making of the following statements, among others, by respondent:

"We have the biggest and strongest organization in the world devoted to this business.

"Being strictly and exclusively in the nursery business growing stock, we sell out in the open field \* \* \* and with the expensive equipment to successfully handle it.

"Our nurseries known throughout the world \* \* \*.

"They are grown on our farms under the most careful and scientific management possible, with nothing lacking in equipment.

"Forty-four years of nursery stock merchandising and shipping experience \* \* \*.

"We ship all orders direct to the customer, from nursery to planter.

"Because we are growers \* \* \*.

"Growers of fruit and ornamental trees and plants" and other statements and phrases of like import.

and otherwise injured, competitors of respondent"; 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, the Federal Trade Commission issued and served a complaint upon the respondent, Rochester Nurseries, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, 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, a hearing was had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony and evidence received and briefs in support of the allegations of the complaint and in opposition thereto 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, Rochester Nurseries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located in the city of Rochester, State of New York, and said respondent, during the period beginning in February, 1929, and ending in July, 1930, was engaged in the sale and distribution of nursery stock to purchasers located in the various States of the United States other than the State of New York. During the aforesaid period respondent caused said nursery stock when sold to be shipped from its place of business in Rochester, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York, and in the course and conduct of its said business respondent was at all times herein referred to in competition with other corporations, and with firms, partnerships and individuals likewise engaged in the sale and distribution in interstate commerce of nursery stock.

PAR. 2. In the course and conduct of its aforesaid business respondent purchased such nursery stock as it required in its operations from Brown Bros. Co., a nursery, growing and propagating its stock under

a contract which provided that the stock furnished respondent should be the same grade of material which was used in filling Brown Brothers' own orders. Respondent did not own or control said Brown Bros. Co. and the only capital stock owned either by respondent or by any of its officers or stockholders in Brown Bros. Co. was 26 shares out of a total share capital of 2,000 shares which was owned by the president of respondent, one Leland C. Brown. In the course and conduct of its business from February, 1929, to July, 1930, in order to promote the sale of nursery stock purchased by it from Brown Bros. the respondent distributed through several States of the United States, catalogs, pamphlets, booklets, circulars, and other publications, and it also caused to be published in newspapers in said States advertisements and advertising matter intended to aid in the sale of its nursery stock purchased as stated. Among the statements made in said advertising pamphlets and other literature during the aforesaid period were the following:

Just bear in mind that you represent a firm of standing and responsibility, with large nurseries and a well earned reputation for stock of the highest quality; who have not sent out, and could not afford to send out, inferior goods. We have had a lot of experience in growing trees and plants and we know what it costs to grow them. We know it is poor economy to grow stock carelessly or to sacrifice quality. You may be sure that what we aim to meet and overcome is competition in quality. Our accomplishment and our record in that are well known \* \* \*.

Whenever a customer tells you he can buy at cheaper prices from some catalogue house or other nursery, ask him to show you the terms on which he will have to buy from the catalogue firm. He will find he has to send his money in advance; also pay carriage and packing charges. Tell him you are selling your trees—not somebody's else. Don't say that the other fellow's trees are no good—say the firm that you represent grows as good trees as can be grown at any price, that they are nurserymen of long experience, and as good business men they sell at prices necessary to cover the cost of growing first quality stock and make a fair profit. \* \* \*

Yet with our prices on the X-grade stock, you can appeal even to them and still give them far better values than they can get in the local stores that are handling nursery stock under conditions that are impossible to the proper care and growth of that stock. Some day we hope to see some sort of legislation that will make these stores and dealers conform to rigid inspection, and regulations just as legitimate growers (nurserymen) do. \* \* \*

Contrast this with even the X-grade stock that we sell. Everything is handled carefully by men who realize its value. It is grown and dug with care, and where necessary to store it over the winter for early spring shipment, or to keep it dormant for late shipment, it is all handled scientifically. The temperature in our storage cellars is all carefully regulated and kept just right, roots are packed in damp moss and handled carefully from the time it is started out in the field until it gets to our customer \* \* \*

Our products are never sold, for resale to catalogue nurseries, mail order houses, department stores, jobbers and peddlers. This competition is not in

position to furnish trees and plants as well taken care of and freshly shipped as can we, being strictly and exclusively in the nursery business—growing the stock we send out in the open field, in a soil and climate adapted to its proper development, best in quality, healthy, thrifty, and of standard nursery size and age and with the expensive equipment to successfully handle it. \* \* \*

**DON'T FORGET NO ONE ELSE CAN SELL YOUR LINE**

No other nursery, no department store, no mail order house carries your line. Our products are exclusively for you and your customers. They are grown on our farms under the most careful and scientific management possible with nothing lacking in equipment \* \* \*.

The quality of service rendered is often more important than the price. Forty-four years of nursery stock merchandising and shipping experience, our own packing houses and a 100 percent self-contained organization, has made our name a synonym for service.

During the period when the statements and representations, supra, were made by respondent it was a small concern with but \$1,000 capital, owning no nursery, growing no stock, and wholly without the equipment mentioned or implied in the advertisements circulated as inducement to customers and prospective customers in the sale of its nursery stock. It was merely a sales organization or jobbing concern which purchased nursery stock from Brown Bros. Co. and sold it to retail customers. Its sales from February to October, 1929, for spring delivery in 1930 amounted to but \$8,155.56; its sales between October 8, 1929, to July, 1930, when it suspended business, were less.

PAR. 3. Among the competitors of respondent in the sale of its nursery products in the several States of the United States during the period from February, 1929, to July, 1930, were a number of concerns who were growers of nursery stock sold by them in competition with respondent. Permanence, stability, and responsibility on the part of sellers of nursery stock are of peculiar importance to their customers, as it is often some years after sale before the stock purchased bears fruit so as to disclose whether or not the fruit is as represented. Such period in the case of pear and apple trees extends from three to ten years.

PAR. 4. The use of the word "nurseries" in the corporate name of respondent taken in connection with statements made in its literature used as an inducement in the sale of its nursery products had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent actually grows or propagates the nursery products sold and distributed by it in several States of the United States and that it owns, operates, and controls nurseries and farms on which the said nursery products sold and distributed by it are grown. Its literature also gives the impression that it is a large concern long in the nursery business. Such are

not the facts and the false and misleading statements as to these facts contained in respondent's literature and in its name had and have the capacity and tendency to induce the purchase of respondent's nursery stock and have and had the capacity and tendency to divert trade from and otherwise injure competitors.

#### CONCLUSION

The acts and practices of respondent under the conditions and circumstances as described in the foregoing findings are 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".

#### 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 introduced, and the briefs of counsel for the Commission, and counsel for the respondent, 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 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, Rochester Nurseries, Inc., and its agents, representatives and employees in connection with the advertising, offering for sale and sale in commerce between and among the several States of the United States and in the District of Columbia of nursery stock, do cease and desist from directly or indirectly—

Using the word "nurseries" or "nursery" or any other word or words of like import in its corporate or trade name, business signs, or advertising matter in combination or conjunction with any other word or words unless and until said respondent actually owns and operates or directly and absolutely controls a nursery or farm in or on which a substantial proportion of the nursery stock sold and distributed by it in interstate commerce is grown.

*It is further ordered,* That respondent, Rochester Nurseries, 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 and conformed to the order to cease and desist hereinabove set forth.

## Complaint

IN THE MATTER OF  
JACOB GENNET

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

*Docket 1970. Complaint, Sept. 22, 1931—Decision, Oct. 31, 1932*

Where an individual engaged in manufacture and sale of mattresses, sold said products in competition with genuine, all new material cotton mattresses and at prices lower than those at which such mattresses could be purchased, labeled as all new material and cotton, in purported compliance with laws of state in which thus sold for resale to ultimate consumer, notwithstanding fact said mattresses thus marked with the white labels specified by statute for those of all new material, contained rags, mattress ticking, cloth, clippings, previously manufactured articles worn about the person and other second-hand and filthy material; with effect of misleading and deceiving purchasers in respect of the composition of said mattresses, and with capacity and tendency to deceive both retail dealers and purchasing public in said respect, and to divert trade from competitors truthfully labeling their products:

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

*Mr. Richard P. Whiteley* for the Commission.

*Mr. Nathan H. Berger*, of Newark, N.J., 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, an individual engaged in the manufacture and sale of mattresses and quilts, and in selling said mattresses to purchasers in the various States of the United States, and with principal place of business in the city of Newark, N.J., with misbranding or mislabeling as to 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, for more than two years last past, "has represented, designated, described, and referred to the said mattresses as containing and being composed entirely of new material, and has attached or caused to be attached or affixed to said mattresses so sold and distributed by him in interstate commerce labels", purportedly attached pursuant to State law and setting forth that the particular mattresses so labeled, were composed of all new material,<sup>1</sup> the facts

<sup>1</sup> The label set forth in the allegations of the complaint, may be found reproduced in the findings, in paragraph 2 thereof, on page 103.

being they were composed of second-hand and used material such as cotton felt, wool, wool rags, etc., all of which materials were second hand and in many instances filthy or unclean.

Such representations and statements, as alleged, "have had the capacity and tendency to mislead and deceive and/or have misled and deceived the purchasing public into the belief that the said representations and statements are true, and have tended to induce, and have induced, the purchase of respondent's mattresses in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured, competitors of respondent"; 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, the Federal Trade Commission issued and served a complaint upon the respondent, Jacob Gennet, an individual doing business under his own name, 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 an answer to the said complaint, a hearing was 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 Commission on the complaint, answer, testimony, and evidence received and brief in support of the allegations of the complaint (no brief being submitted by or for 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. Respondent, Jacob Gennet, is a resident of Newark, State of New Jersey, with his office and principal place of business located in said city and State and is now and has been for more than two years last past engaged in the manufacture of mattresses, and in the sale and distribution of said products to jobbers, storekeepers, and retail dealers located in the States of New Jersey and New York. He has caused said mattresses when sold to be shipped from his place of business in Newark, N.J., to purchasers thereof located in the State of New York, and in the course and conduct of his said business respondent was at all times herein referred to in competition with other individuals, and with firms, partnerships, and corporations



likewise engaged in the sale and distribution in interstate commerce of mattresses.

PAR. 2. In the course and conduct of his aforesaid business respondent manufactures and sells cotton mattresses, silk floss mattresses, hair mattresses, and shoddy mattresses. His principal sales are to storekeepers and to retail dealers and his plant has a capacity of one hundred mattresses a day. To the mattresses manufactured by respondent and sold and delivered by him to retailers in the State of New York respondent affixed labels on which the following reading matter appeared:

Do Not remove this label under penalty of law

This article contains all new material

Size 4/0 Cotton R. E.

Manufactured by

JACOB GENNET

Newark, N. J.

This tag is attached as required by law as a certification that the contents of this article are as represented in compliance with Chapter 369, Laws of 1918, of the State of New York.

4/0 Cotton R. E.

In the law of the State of New York referred to in the reading matter of the aforesaid labels so attached by respondent to its mattresses sold in New York there appears the following:

Section 389, p. — Tagging when new; *idem*, second-hand —: No person shall sell, expose for sale, deliver or consign for sale or have in his possession with like intent:

(a) Any mattress, upholstered spring bed or metal bed spring which contains only new material unless there is attached thereto a white tag signifying:

1. The name and address either of the manufacturer or of the vendor or of the successive vendors, and

2. A description of the filling used and a statement that all the material used is new; or

(b) Any mattress, upholstered spring bed or metal bed spring which contains any second-hand material unless there is attached thereto a yellow tag bearing the words "second-hand" and specifying:

1. The name and address either of the manufacturer or vendor or successive vendors.

2. A description of the filling used, and

3. The date of sterilization of the material used and name and address of the person, firm or corporation sterilizing it.

4. In the description of the material used upon any label or tag it shall be unlawful to use in the description of such material used as the filling, or in the construction of any mattress, upholstered spring bed, or metal bed spring, any term or designation likely to mislead.

The aforesaid labels or tags attached by respondent to the mattresses sold by him in the State of New York were white and upon

all of them the words "all new material" appeared. Certain inspectors of the Mercantile Bureau of the Department of Labor of the State of New York, whose duty it is to inspect mattresses and other articles of bedding in order to ascertain whether said articles being sold in the State of New York are properly labeled or branded, visited a number of retail establishments in the city of Yonkers, Westchester County, N.Y., and opened a number of cotton mattresses manufactured by respondent and delivered by him to said retail establishments from his place of business in Newark, N.J., all of which mattresses contained the white label quoted in paragraph 2 of these findings. None of the mattresses so opened by said inspectors contained all new material, but they all contained not only cotton but rags, mattress ticking, cloth clippings and previously manufactured articles which were definitely ascertained to have been worn about the person, such as pieces of mattress ticking with the tufting cords still attached thereto, rags that were blood stained, pieces of wool, velvet clippings that had been used, parts of finished garments, pieces of mattress ticking that were so discolored as to indicate that they had been taken from used mattresses and various other second-hand and filthy material. No mattress of respondent that was opened contained all new material as it was labeled or branded to contain.

PAR. 3. The mattresses sold and distributed by respondent in the State of New York as herein described, which mattresses contained second-hand material and were labeled as containing all new material, when sold in competition with cotton mattresses actually containing all new material and at prices lower than the purchasers of said mattresses could secure cotton mattresses containing all new material. At least one of the retail dealers in the city of Yonkers, N.Y., who purchased mattresses from respondent to which were affixed white labels indicating that their contents were all new material, when proceedings were brought by the State of New York for violation of the mattress label law, entered a plea of guilty and had a sentence imposed upon him by the court, which sentence was suspended.

PAR. 4. The representations made by respondent in the labels or tags attached to the mattresses containing filthy and second-hand material to the effect that said mattresses contained all new material were false in fact and the use of the white labels or tags upon the mattresses sold in the State of New York by respondent misled and deceived the purchasers of said mattresses into the belief that they contained all new material, and the aforesaid representations and the use of the said white tags or labels had and have the capacity and tendency to deceive both retail dealers and the public purchasing said mattresses from said retail dealers into the belief that the mattresses really contain all new material and the aforesaid false rep-

representations and misbranding or mislabeling are unfair to the purchasing public and to competitors of respondent who truthfully label their products and have the capacity and tendency to divert trade from such competitors.

#### CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice 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 upon the complaint of the Commission, the answer of the respondent, the testimony and evidence introduced, and the brief of counsel for the Commission, 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 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, Jacob Gennet, and his agents, representatives, and employees in connection with advertising, offering for sale and sale in commerce between and among the several States of the United States and in the District of Columbia of mattresses, do cease and desist from directly or indirectly—

1. Designating or describing or representing mattresses made in whole or in part of second-hand or used material as mattresses made of or containing all new material.

2. Labeling or branding mattresses composed in whole or in part of second-hand or used material with labels or tags of such color or design as to import or imply that said mattresses are manufactured of or contain all new material.

3. Representing or designating mattresses manufactured from shoddy or other second-hand material as made of or containing all new material.

*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

NATHAN GENNET, AN INDIVIDUAL TRADING UNDER  
THE NAME AND STYLE OF CENTRAL QUILT & MAT-  
TRESS MFY.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

*Docket 1977. Complaint, Oct. 13, 1931—Decision, Oct. 31, 1932*

Where an individual engaged in manufacture and sale of mattresses, sold said products in competition with genuine, all new material cotton mattresses and at prices lower than those at which such mattresses could be purchased, labeled as all new material in purported compliance with laws of State in which made, and with labels of same color specified by law of State in which sold to retailers for resale to ultimate consumer, for all new material mattresses, notwithstanding fact articles thus marked contained shoddy, rags, and other second-hand material, some of which had indications of having been used about the person; with effect of misleading and deceiving purchasers in respect of the composition of said mattresses, and with capacity and tendency to deceive both retail dealers and purchasing public in said respect, and to divert trade from competitors truthfully labeling their products:

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

*Mr. Richard P. Whiteley* for the Commission.

*Isserman & Isserman*, of Newark, N.J., 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 as Central Quilt & Mattress Mfy. in the manufacture and sale of mattresses and quilts, and with principal place of business in Newark, N.J., with misbranding or mislabeling as to 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, for more than two years last past, "has represented, designated, described, and referred to the said mattresses as containing and being composed entirely of new material, and has attached or caused to be attached or fixed to said mattresses so sold and distributed by him in interstate commerce labels", in purported

compliance with the requirements of State laws, setting forth that mattresses in question were composed of all new material;<sup>1</sup> facts being mattresses thus labeled were composed of second hand and used materials, such as cotton, cotton rags, jute, etc., all of which materials were second hand and in many instances filthy or unclean.

Such representations and statements by respondent, as alleged, "by means of which he has offered for sale and sold or is selling his products as set forth \* \* \*, have had the capacity and tendency to mislead and deceive and/or have misled and deceived the purchasing public into the belief that the said representations and statements are true, and have tended to induce, and have induced, the purchase of respondent's mattresses in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured, competitors of respondent"; 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, the Federal Trade Commission issued and served a complaint upon the respondent, Nathan Gennet, an individual trading under the name and style of Central Quilt & Mattress Mfy., 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 an answer to the said complaint, a hearing was 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 Commission on the complaint, answer, testimony and evidence received and brief in support of the allegations of the complaint (no brief being submitted by or for 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 conclusions drawn therefrom:

<sup>1</sup> Labels in question, as alleged, and set forth in the complaint, were as follows:

**DO NOT REMOVE THIS LABEL Under Penalty of Law**

This Article Contains ALL NEW MATERIAL Consisting of

Manufactured by Central Quilt & Mattress Mfy., Newark, N.J.

This tag is attached as required by law as a certification that the contents of this ARTICLE are as represented, in compliance with Article 25-B of the General Business Law of the State of New York.

**DO NOT REMOVE LABEL Under Penalty of the Law of State of New Jersey**

This mattress is made of all new material. Central. Central Quilt & Mattress Mfy., N. GENNET, Prop., Newark, N.J. Contains COTTON R. E.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nathan Gennet, an individual trading under the name and style of Central Quilt & Mattress Mfy., is a resident of Newark, State of New Jersey, with his office and principal place of business located in said State and is now and has been for more than two years engaged in the manufacture of mattresses, and in the sale and distribution of said products to jobbers, storekeepers and retail dealers located in the States of New Jersey and New York. He has caused said mattresses when sold to be shipped from his place of business in Newark, N.J.; to purchasers thereof located in the State of New York, and in the course and conduct of his said business respondent was at all times herein referred to in competition with other individuals, and with firms, partnerships, and corporations likewise engaged in the sale and distribution in interstate commerce of mattresses.

PAR. 2. In the course and conduct of his business respondent manufactures and sells all kinds of mattresses, including hair mattresses, silk mattresses, kapok mattresses, cotton mattresses, napper mattresses, and woolen material mattresses. The plant of respondent has a capacity of about one hundred mattresses a day and the output is usually from twenty to forty mattresses a day. To certain mattresses manufactured by respondent and sold and delivered by him to retail dealers in the State of New York during the years 1930 and 1931 the respondent affixed white tags or labels on which the following reading matter approved in red lettering:

DO NOT REMOVE THIS LABEL Under Penalty of the Law of State of New Jersey	
This mattress is made of all new material	<b>CENTRAL</b>
CENTRAL QUILT & MATTRESS Mfy. N. Gennet, Prop. 210 W. Kinney St., Newark, N.J.	
CONTAINS NAPPER	

The law of the State of New York with reference to the labeling or branding of mattresses sold within that state contains the following provision:

Section 389 — p. Tagging when new; idem, "second-hand, —" No person shall sell, expose for sale, deliver or consign for sale or have in his possession with like intent;

(a) Any mattress, upholstered spring bed or metal bed spring which contains only new material unless there is attached thereto a white tag signifying:

1. The name and address either of the manufacturer or of the vendor or of the successive vendors; and
2. A description of the filling used and a statement that all the material used is new; or

(b) Any mattress, upholstered spring bed or metal bed spring which contains any second-hand material unless there is attached thereto a yellow tag bearing the words "second-hand" and specifying:

1. The name and address either of the manufacturer or vendor or successive vendors;
2. A description of the filling used; and
3. The date of sterilization of the material used and name and address of the person, firm, or corporation sterilizing it;
4. In the description of the material used upon any label or tag it shall be unlawful to use in the description of such material used as the filling, or in the construction of any mattress, upholstered spring bed or metal bed spring, any term or designation likely to mislead.

The labels or tags attached by respondent to certain mattresses sold by him in the State of New York during the years 1930 and 1931 were white and upon all of them the words "this mattress is made of all new material" appeared. Inspectors of the Mercantile Bureau of the Department of Labor of the State of New York, whose duty it is to inspect mattresses and other articles of bedding in order to ascertain whether said articles being sold in the State of New York are properly labeled or branded, visited certain retail establishments in the city of New York during the month of March, 1931, and opened a number of mattresses manufactured by respondent and delivered by him to said retail dealers from his place of business in Newark, N.J., to all of which mattresses were affixed the white label quoted in paragraph 2 of these findings. None of the mattresses so opened by said inspectors contained all new material but they all contained second-hand material, consisting of cotton, jute, rags, cloth clippings, and mattress ticking and some of the said material was not only second-hand but was discolored and had a stale, sweaty, and musty odor indicating that it had been used on or about the person. No mattress of respondent that was opened by said inspectors contained all new material as it was labeled or branded to contain.

PAR. 3. The mattresses sold and distributed by the respondent in the State of New York as herein described, which mattresses contained second-hand material and were labeled as containing all new material, were sold in competition with mattresses actually containing all new material at prices lower than the purchasers of said mat-

tresses could secure mattresses actually containing all new material. Some of the mattresses sold by respondent to retailers in the city of New York as herein stated to which the respondent had attached white labels indicating the material of said mattresses as being of new material and which also designated the material as being napper were found to contain shoddy or second-hand material.

PAR. 4. The representations made by respondent on the labels or tags attached to the mattresses containing used or second-hand material to the effect that said mattresses contained all new material were false in fact and the use of the white labels or tags upon the mattresses sold by the respondent in the State of New York misled and deceived the purchasers of the said mattresses into the belief that they contained all new material, and the aforesaid representations and the use of the said white tags or labels had and have the capacity and tendency to deceive both retail dealers and the public purchasing said mattresses from said retail dealers into the belief that the said mattresses really contained all new material, and the aforesaid false representations and misbranding or mislabeling are unfair to the purchasing public and to competitors of respondent who truthfully label their products and have the capacity and tendency to divert trade from said competitors.

#### CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice 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 upon the complaint of the Commission, the answer of the respondent, the testimony and evidence introduced, and the brief of counsel for the Commission, 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 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, Nathan Gennet, and his agents, representatives, and employees in connection with advertising, offering for sale and sale in commerce between and among



the several States of the United States and in the District of Columbia of mattresses, do cease and desist from directly or indirectly—

1. Designating or describing or representing mattresses made in whole or in part of second-hand or used material as mattresses made of or containing all new material.
2. Labeling or branding mattresses composed in whole or in part of second-hand or used material with labels or tags of such color or design as to import or imply that said mattresses are manufactured of or contain all new material.
3. Representing or designating mattresses manufactured from shoddy or other second-hand material as made of or containing all new material.

*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  
MENKE GROCERY 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 1993. Complaint, Jan. 14, 1932—Decision, Oct. 31, 1932*

Where a corporation engaged in sale of groceries, stock powders, and other merchandise at retail through orders secured through its house-to-house canvassers,

- (a) Described and represented itself on its letterheads, order blanks, and other trade literature as a wholesale grocer and displayed upon said letterheads, etc., the legend "United States Food Administration License G-30152" and represented to the public through its said canvassers that its business was done under the license and approval of the Government and its merchandise inspected and approved by officials thereof, facts being it was not in any sense a wholesale grocer and its products were not inspected by the Government and its Food Administration license along with other similar licenses had expired with the abolition of said administration by executive order years before;
- (b) Guaranteed satisfaction to the customer and reimbursement of the purchase price upon the return of any goods as to which the customer was dissatisfied and through its canvassers promised prompt shipment of merchandise ordered and prepayment of transportation charges where shipments were made by express or freight, facts being it failed to make such prepayment and frequently failed and refused to return purchase price as promised or to make prompt shipments or to ship at all, notwithstanding payment for goods had been made in full;
- (c) Represented certain of its merchandise as pure and genuine extracts and supplied samples indicating merchandise of very high and superior grade, to its canvassers who generally represented said samples as indicative of merchandise to be supplied pursuant to customer's order, facts being extracts shipped were imitation, and merchandise supplied to customer was generally far inferior to sample; and
- (d) Represented its "Chickena" powder as an effective medicine for various fowl diseases and effective in causing hens to lay, and its "Lion Brand Stock Powder" as "a great stock remedy and conditioner", and promised return of purchase price of either product in event same should not be satisfactory to customer, facts being said products were not effective for purposes represented, and it failed to return purchase price thereof, notwithstanding expressions of dissatisfaction by customers in many instances and return of said last-named product;

With effect of deceiving customers and with capacity and tendency so to do, and induce purchase of its merchandise on account of their belief in truth of such representations, and thereby divert business from its competitors to their injury:

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

*Mr. Alfred M. Craven* for the Commission.  
*McCullum, Schwind & Barnes*, 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 groceries, stock powders, and other merchandise at retail upon orders secured by house to house canvassers, and by mail to purchasers in various States, and with principal place of business in Kansas City, with misrepresenting business status, with claiming falsely Government endorsement, inspection, license, or approval, with offering deceptive inducements to purchase through misleading or unobserved guarantee, unfulfilled transportation prepayment and money back promises, and through deliveries not conforming to sample, and with misrepresenting qualities and results 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 aforesaid, makes numerous false and misleading statements with reference to character of its goods, and business, and manner of doing business, including among others, the following representations, namely, that—

It is a wholesale grocer and operates under United States Food Administration license, with Government inspected merchandise, facts being it purchases its merchandise from wholesale grocers, is not in any respect a wholesaler, and does not operate under any such Government license or approval, if it ever did;

Guarantee of satisfaction to the customer and return of purchase price on any goods as to which customer is dissatisfied, and promise of prompt shipment, and, where shipment is by express or freight, of prepayment of transportation charges, facts being return of purchase price to dissatisfied customers is refused in many instances, and in no instance have transportation charges been prepaid, and in numerous instances there has been failure to make prompt shipment, notwithstanding payment had been made in full;

Representation of its "extracts" as pure and genuine, and filling of orders for such products, with imitations, and practice of supplying canvassers with samples of high grade merchandise, and filling orders solicited pursuant to such samples, with merchandise far inferior thereto, as a rule, and often dirty, wormy or otherwise unfit for human consumption;

Representation of its "Chickena" powder as an effective medicine for various diseases of fowls, also for causing hens to lay, and

unfulfilled guarantee of return of purchase price in event of customer's dissatisfaction, notwithstanding fact powder is not effective for the purpose represented; and

Representation of its "Lion Brand Stock Powder" as "a great stock remedy and conditioner" and as remedial for various livestock diseases and sold on trial, and unfulfilled promise to return purchase price to customer if dissatisfied, notwithstanding fact preparation is not effective for purposes represented and customers have frequently expressed their dissatisfaction and returned the remedy.

Such false and misleading representations, as alleged, "and each of them have the capacity and tendency to deceive and do deceive customers of respondent and to induce them to purchase respondent's merchandise in and on account of their belief in the truth of such representations and thus to divert business from respondent's competitors to their injury"; 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" (38 Stat. 719), the Federal Trade Commission, on the 14th day of January, 1932, issued and thereafter served its complaint against the respondent, Menke Grocery Co., 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 an answer to said complaint, the hearing was had before a trial examiner theretofore duly appointed, and testimony and evidence received in support of the charges stated in the complaint and in opposition thereto, thereupon 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 its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Missouri with its principal place of business in Kansas City in said State. It is, and for many years last past has been, engaged in the business of selling groceries, stock powders, and other merchandise at retail, upon orders secured by house to house canvass by its duly

authorized agents, such sales being made to purchasers thereof, chiefly farmers, located principally in the States of Illinois, Iowa, Missouri, Nebraska, Kansas, Colorado, and Wyoming. In the course and conduct of its business, respondent, in response to the orders received by it, ships the said groceries and other merchandise, in interstate commerce, to its customers by mail, express and freight at their respective points of location in the territory above described.

PAR. 2. In the course and conduct of its business respondent is and has been, during its corporate existence, in competition with other individuals, partnerships and corporations, located in the United States, engaged in the sale of groceries and other merchandise of the nature dealt in by respondent at retail and in the transportation thereof, in interstate commerce, to customers located in the States comprising the territory above described.

PAR. 3. In the course and conduct of its business aforesaid, respondent makes and has made numerous false and misleading statements with reference to the character of its goods, character of its business, and its manner of doing business, among others, as follows:

1. Respondent on its letterheads, order blanks, and other trade literature describes and represents itself to be a wholesale grocer, when in truth and in fact, respondent sells its merchandise solely at retail to the general public, and is not in any respect a wholesale grocer.

2. Respondent has used upon its letterheads, order blanks, and other trade literature, the legend "United States Food Administration License G-30152", and through its agents has represented to the public that its business is done under the license and approval of the United States Government, and that its merchandise has been inspected by officials of the United States Government and been by them approved; when in truth and in fact the respondent's products were not inspected by the United States Government or any of its officials and its Food Administration license, as every other Food Administration license expired with the abolition of the Food Administration by the Executive order of the President of the United States of August 21, 1920, reading in part as follows:

The work of the United States Food Administration, having been completed to the public benefit and to my satisfaction, said United States Food Administration, and all remaining divisions and branches thereof, are hereby terminated and abolished.

While the respondent claims to have removed the legend "United States Food Administration License G-30152" from its letterheads and order blanks, such removal if made was not made until after the issuance of the Commission's complaint in this proceeding.

3. Respondent guarantees satisfaction to the customer and to return the purchase price on the return of any goods as to which the customer is dissatisfied; when in truth and in fact in many instances respondent has failed and refused to return the purchase price to dissatisfied customers.

4. Respondent promises through its canvassers to make prompt shipment of the merchandise ordered and, in cases where shipment is made by express or freight, prepay transportation charges. In truth and in fact in no instance has the respondent fulfilled such promises as to the prepayment of charges and in numerous instances has failed to make prompt shipment of merchandise and in many instances failed to ship same at all, although payment therefor was made in full.

5. Respondent in selling its certain merchandise known as extracts represents same to be pure and genuine but in filling such orders for such extracts ships extracts that are not pure or genuine but are imitation.

6. Respondent supplies its canvassers with samples of merchandise which samples represent the merchandise to be of very high and superior grade and said canvassers generally represent that the merchandise which the customer may order or does order will be according to the sample, when as a matter of fact merchandise shipped to the customer is generally far inferior to the sample.

7. Said respondent, among its other merchandise, sells a powder called "Chickena" which it represents to be effective as a medicine for various diseases of fowls and also effective to cause hens to lay and guarantees to return the purchase price of the powder in case such powder should not be satisfactory to the customer. The said powder is not effective for the purpose represented and the respondent does not, upon the return of such powder from a dissatisfied customer, return the purchase price as promised.

8. The respondent sells a certain preparation called by it "Lion Brand Stock Powder" representing that the same is "a great stock remedy and conditioner". As to this preparation respondent represents that it is remedial of various diseases of livestock and that it is sold on trial to the customer and that the purchase price thereof will be returned if the customer is dissatisfied; when in truth and in fact the said preparation is not effective for the purposes represented and the respondent has in no instance returned the purchase price although in many instances customers have expressed their dissatisfaction with the remedy and returned same to the respondent.

PAR. 4. The various false and misleading representations set forth in paragraph 3 hereof and each of them have the capacity and tend-

ency to deceive (and do deceive customers of respondent) and to induce them to purchase respondent's merchandise in and on account of their belief in the truth of such representations and thus to divert business from respondent's competitors to their injury.

#### CONCLUSION

The acts and practices of 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

This proceeding having been heard by the Federal Trade Commission upon the pleadings and testimony and evidence introduced, and briefs of 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, Menke Grocery Co., its officers, agents, and employees, in connection with selling or offering for sale of its merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from—

1. Using in its letterheads, billheads, or other trade literature, the legend "United States Food Administration License G-30152", or in any other manner representing to the public that it is operating under the license or approval of the United States Government.

2. Representing on its letterheads or other trade literature, or through its agents or in any other manner that it operates a wholesale grocery, or is a wholesale grocer.

3. Selling any of its merchandise on promise or guarantees of satisfaction to the customer and that it will return the purchase price on the return of goods as to which the customer is dissatisfied without fulfilling such guarantees and promises.

4. Promising, either expressly or impliedly, prompt shipment of merchandise purchased unless and until respondent, by regular course of business shall make such prompt shipment.

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5. Shipping merchandise that is inferior to samples shown the prospective buyers or which substantially differ from the description of the merchandise sold by its agents.

6. Misrepresenting in any manner the effectiveness of the stock and chicken powders or remedies.

7. Representing that any of its stock or chicken powders or remedies are sold on trial with the privilege of the buyer to return the merchandise if dissatisfied, and to receive back the price thereof, unless and until the respondent in the regular course of business shall return the purchase price upon the return by the customer of the merchandise purchased.

*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 they have complied with the order to cease and desist hereinbefore set forth.



## Complaint

## IN THE MATTER OF

## EXPORT PETROLEUM COMPANY OF CALIFORNIA, LTD.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY THE PROVISIONS OF SEC. 4 OF AN ACT OF CONGRESS APPROVED APR. 10, 1918

*Docket 1969. Complaint, Sept. 22, 1931—Decision, Nov. 14, 1932*

Where a corporation engaged in exportation of gasoline in cases containing two standard-size, 5-gallon capacity cans, generally recognized by trade and purchasing public as having such a capacity and usually so filled for export sale,

Pursued a general policy of filling such cases for export at the rate of 9.6 gallons per case or in less than 10-gallon quantities, and sold said product to wholesalers and retailers, correctly invoiced as to quantity, but in afore-said containers and cases with such marks as "2/5 gallon tins" or "5 U.S. gallons" or words of similar import, or with no indication of quantity, for resale to ultimate consumer by the case or can;

With result of placing in the hands of retailers and ultimate sellers an instrumentality enabling them to defraud consumers or other buyers through selling said cases and cans as and for those holding 10 full gallons, and 5 gallons, respectively, or by causing the consumer or buyer to purchase said containers as and for those filled to standard capacity, and with a tendency to divert export trade to it from competitors who did not follow such practice:

*Held*, That such practices, under the circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition in export trade, in violation of the provisions of section 5 of the Federal Trade Commission Act, as extended by section 4 of the Export Trade Act.

*Mr. Harry D. Michael* for the Commission.

*Baillie, Turner & Lake*, of Los Angeles, Calif., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, as extended by the provisions of section 4 of the Export Trade Act, the Commission charged respondent, a California corporation engaged in the business of exporting gasoline and kerosene, and with principal place of business in Los Angeles, with misrepresenting unit quantities and misbranding or mislabeling, in violation of the provisions of section 5 of said first named act, prohibiting use of unfair methods of competition in interstate commerce, as extended by section 4 of said last named act.

Respondent exporter sells his said product to jobbers, wholesalers and retailers abroad for ultimate resale to the consumers, in unit

quantities of 9.6 gallons or less, containered in standard two 5-gallon can cases, both with and without such labels on said standard cans or tins, and cases, as "5 U.S. gallons" or "2/5 gallon tins", as the case might be, or words of similar import, and, while indicating liquid content to his original purchasers, quotes and charges by the case, in selling as aforesaid; notwithstanding fact aforesaid standard tins, generally used in export trade, have come to be accepted as having capacity for and as containing 5 full U.S. gallons, and said standard cases similarly as containing 10 full U.S. gallons, containered in two standard 5-gallon tins as aforesaid.

Respondent thereby, as alleged, places in the hands of retailers and others, who resell to ultimate consumers by the can or case in the original package, in accordance with usual custom, an instrumentality enabling and encouraging them to commit a fraud upon the consumers or other buyers through enabling them to sell said cases or tins, as and for those holding 10 or 5 full gallons, as the case may be, or through causing such consumers or buyers to purchase such cases and cans under aforesaid misapprehension and respondent is thereby enabled to undersell competitors who fill their containers to standard capacity, in export trade, in accordance with the general custom.

Complaint alleges that the aforesaid practice of respondent "tends to and does divert export trade to respondent" from its competitors, and "has a tendency to bring American trade into disrepute with the general buying public in foreign countries and affects generally and adversely the reputation and good will enjoyed by such other exporters of and in the United States who compete with respondent in foreign commerce and who fill their containers as aforesaid to standard capacity", and charges "that the above alleged acts and practices of respondent have been and are to the prejudice and injury of the public and of respondent's said competitors and constitute unfair methods of competition in export trade 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, as extended by section 4 of an act of Congress entitled 'An act to promote export trade, and for other purposes', approved April 10, 1918".

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 Commis-

sion, to define its powers and duties, and for other purposes", as extended by section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade and for other purposes", the Federal Trade Commission issued and served its complaint upon respondent, Export Petroleum Co. of California, Ltd., a corporation, charging said respondent with the use of unfair methods in export trade in violation of the provisions of section 5 of said first named act as extended by section 4 of said last named act.

Respondent having entered its appearance and filed its answer to said complaint, a stipulation as to the facts in lieu of testimony was agreed upon by and between Robert E. Healy, chief counsel for the Federal Trade Commission, and said respondent, subject to the approval of said Commission. Said stipulation as to the facts, having been submitted to said Commission, the same was thereafter duly approved.

Therefore, this proceeding came on for final determination on said complaint and answer, said stipulation as to the facts, statement in writing submitted by respondent and oral statement by counsel for the Commission, as provided for and agreed upon in said stipulation, and the Commission having duly considered the matter 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. Respondent 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 said State. Respondent is now and has been for several years last past engaged in the business of exporting gasoline and kerosene from the United States to foreign nations, in competition with other corporations, partnerships, firms and individuals, likewise engaged in the business of exporting gasoline and kerosene from the United States to foreign nations.

PAR. 2. In the course and conduct of its said business, respondent causes and has caused its gasoline product to be packed in cases containing two tins or cans of standard size, each can having a shipping capacity of 5 gallons of gasoline, United States measure, with additional air space to allow for gas expansion, which said tins or cans have been and are recognized by the trade and purchasing public to be of 5 gallons capacity, United States measure. Cans of such size are in general use in the sale and shipment of gasoline in export trade and are generally recognized by the trade and pur-

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chasing public as having a capacity of 5 United States gallons of gasoline.

PAR. 3. During the year 1928 and prior thereto respondent pursued the general policy in the shipment and sale of gasoline in export trade of filling such cases at the rate of 9.6 U.S. gallons per case or in other less quantities than 10 U.S. gallons per case. Such practice was continued generally up to and including the month of July, 1929. Thereafter, 1 shipment of 1,000 cases was so packed and invoiced under date of August 17, 1929, 1 shipment of 5 cases was so packed and invoiced under date of January 2, 1930, and several shipments, made from February 27, 1930, to April 10, 1930, were also packed as aforesaid, which said shipments were included in 11 invoices to the same consignee and involved a total of 12,050 cases. In several instances, prior to April 10, 1930, kerosene and other petroleum products were likewise shipped in such containers packed in less quantities than 10 gallons to the case. In some such shipments as aforesaid in which gasoline was packed by respondent in quantities less than 10 United States gallons to the case, the cases were marked "2/5 gallon tins" or words and figures of similar import, in other instances, the cans or tins were marked "5 U.S. gallons" or words and figures of similar import, while in other instances, the tins and cases were plain with nothing thereon to indicate the quantity of the contents thereof. Respondent sold its said products, packed as aforesaid, to wholesalers and retailers in foreign countries for ultimate resale to members of the purchasing public in such foreign countries. It was the usual practice to sell said products to the ultimate consumer by the case or by the can in the original packages marked or plain as aforesaid as the case might be. Respondent caused its said products to be transported from the United States to the original purchasers thereof in foreign countries. In selling such products to the original purchasers thereof, respondent indicated the liquid contents per case on its quotation blanks and invoices but the prices quoted and listed thereon were not by the gallon but by the case.

PAR. 4. There were among the competitors of respondent in export trade during the times covered by said practices of respondent as above set forth those who filled tins or cans of the kind and description aforesaid to the standard capacity of 5 U.S. gallons when selling and shipping gasoline in export trade and such was and is the general practice of the trade. A few competitors of respondent, during said period, followed the practices of respondent as above stated, but not in sufficient number to establish a general practice in the trade. Shipments of short-filled containers as above described

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were those to foreign countries other than to British possessions. In shipments to British possessions of gasoline in case lots, such cases are and were packed at the rate of 8 imperial gallons to the case, the same being the equivalent of 9.6 gallons to the case. However, such sales were and are made on the basis of imperial measure content and such content was and is so indicated on invoices and on cases or cans or both.

PAR. 5. Said practice results in placing in the hands of retailers and other sellers of gasoline an instrumentality which enables them to commit a fraud upon the consumers or other buyers by enabling such retailers and other sellers to sell the said cases or cans of gasoline as and for cases or cans of full 10 U.S. gallons or 5 U.S. gallons, respectively, or by causing such consumer or buyer to purchase such cases and cans of gasoline under the misapprehension that they are filled to said standard capacity. The purchasing public in buying gasoline in standard size cans, marked as aforesaid or unmarked as to contents, expect to receive the full measure of 5 U.S. gallons per can or 10 U.S. gallons per case. Said practice of respondent tended to divert export trade to respondent from its said competitors who did not follow such practice, to the injury and prejudice of said competitors.

## CONCLUSION

The practice of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in export trade 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, as extended by section 4 of an act of Congress entitled "An act to promote export trade, and for other purposes", approved April 10, 1918.

## 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 stipulation as to the facts submitted in lieu of testimony, together with respondent's supplementary statement in writing and oral statement by the attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent 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", as extended by section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade and for other purposes",

*It is ordered,* That respondent, Export Petroleum Co. of California, Ltd., its officers, agents, and employees, in connection with the sale of gasoline in export trade in standard size cans of 5 gallons capacity per can, United States measure, or in cases of two such cans per case, cease and desist from—

1. Marking or labeling such cans "5 U.S. gallons", or with words or figures of similar import, or such cases "2/5 gallon tins", or with words or figures of similar import, unless the gasoline content is, in fact, 5 gallons per can or 10 gallons per case, United States measure.

2. Selling such cans or cases of gasoline when the cans or cases, or both, are so marked as to indicate that they contain such standard capacity, unless such cans are in fact filled to such standard capacity.

3. Selling such cans or cases of gasoline when the cans or cases have nothing thereon to indicate the amount of the liquid contents thereof, unless such cans are in fact filled to such standard capacity.

4. Selling such cans or cases of gasoline when the same contain less than said standard capacity unless both such cans and cases have the exact liquid contents thereof plainly and conspicuously indicated thereon in a reasonably permanent manner.

*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

WILLIAM H. JOHNSEN, INDIVIDUALLY AND TRADING  
AS TECHNICAL 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 1978. Complaint, Oct. 14, 1931—Decision, Nov. 14, 1932*

Where an individual engaged in manufacture of a red fluid for mixing with straight gasoline, and in sale thereof under name "Ester" or "Ester Compound" to filling station owners or operators throughout the country in competition with the expensively and extensively advertised Ethyl and the different gasolines blended therewith, "Esso" and other well-known, extensively advertised, and premium-priced antiknock products, and the different straight gasolines,

Represented in circulars distributed to vendees or prospective vendees of his said compound that the same mixed with gasoline reduced "detonation" and "fuel knocks" and produced an antiknock, premium-priced motor fuel of merit, minimizing carbon, neutralizing action of gum, lubricating the combustion cycle and in various ways and in general correcting defects in gasoline and improving engine performance, and supplied vendees with pump globes displaying words, "*Ester with Ester compound Gasoline*" facts being product in question was of no value to purchasers of gasoline with which it had been mixed;

With result of deceiving its aforesaid vendees and the consuming public with respect to nature and value of product in question, and of furnishing filling station owners and operators throughout the United States with means of deceiving and misleading the consuming public into believing that straight motor fuel mixed with said product was improved thereby, and of thus increasing sales of retailers of the gasoline concerned at the expense of competitors honestly designating their product as straight gasoline or as high test, high compression, or antiknock gasoline, as the case might be, and with tendency so to deceive, to the injury of interstate distributors honestly designating and describing their products:

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

*Mr. Henry C. Lank* 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 under his own name and also as Technical Chemical Co. in the sale of a fluid, under the designation "Ester" and "Ester Compound", for mixing with gasoline for

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automotive use, and with principal place of business in Dallas, with misrepresenting nature and results of products, and advertising falsely or misleadingly in said respects, 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 aforesaid, falsely represents that his said product mixed with gasoline for automotive use "(a) reduces detonation, (b) minimizes carbon and neutralizes the action of gum, (c) lubricates the combustion cycle, and (d) corrects other defects in gasoline", that, mixed with gasoline at the rate of one part compound to one thousand parts gasoline, "it decreases the heat in the explosion chamber and at the same time increases the expansive force of the explosion" and that "it also tends to eliminate carbon formation" and that "this reduces fuel knocks", and, further, that when used as a motor fuel, as aforesaid, it "acts as a powerful and oxidizing agent and attacks the carbon that has adhered to the various parts of the combustion chamber"; the facts being it has no such effect.

Respondent further, as charged, represents that "another distinctive feature of 'Ester' compound is the bond of lubrication that it imparts in the combustion cycle. This is an intensive heat resisting property that gives lubrication to the utmost point in the fire zone, assuring maximum compression, and keeps the valves from sticking", and that, in contrast with many gasolines, which have an unbalanced combustion, causing sluggishness, poor starting, etc., "Ester" compound "is compounded to correct these defects and imparts to the gasoline a smoother, better balanced and flexible performance. The motor will function on less r.p.m. in traffic and accelerate quicker"; facts being product in question has no such effects or qualities as above claimed.

Respondent further, as charged, "has had printed advertisements containing all of the above false and fraudulent representations and statements, and has caused said printed advertisements to be distributed to purchasers and prospective purchasers of his said product located in various States of the United States. And the above and foregoing representations or statements of respondent by means of which he has offered for sale and sold or is selling his product, as set forth in this complaint, have had and have the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into the belief that the said representations are true and have the tendency to induce and have induced the purchase of respondent's product in reliance upon such erroneous belief and



have tended to divert trade from and have diverted trade from and otherwise injured competitors of respondent."

Use by respondent, as alleged, of such "false and fraudulent representations, statements, and assertions, as hereinabove set forth, constitutes 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 motor fuel industry"; and constitutes unfair methods of competition 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 the respondent, William H. Johnsen, individually and trading as the Technical Chemical Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

The said respondent filed his answer to the complaint herein and entered his appearance in proper person. Hearings were thereafter 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 brief of counsel for the Commission, the respondent having failed to file a brief in his own behalf, 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

PARAGRAPHS 1. The respondent, William H. Johnsen, is an individual doing business under his own name and also doing business and trading as Technical Chemical Co., with his principal place of business in Dallas, Tex. He is engaged in the manufacture and sale of a fluid which is used for the sole purpose of being mixed with straight, ordinary, or regular gasoline for use as a motor fuel. The respondent describes and designates his product as "Ester" or "Ester Compound" and since on or about January 29, 1930, has sold and distributed said "Ester" or "Ester Compound" to persons,

firms, or corporations located in the Middle West and Southern States of the United States, particularly, West Virginia, Indiana, North Carolina, South Carolina, Tennessee, Arkansas, Louisiana, Mississippi, and in California, Utah, and other States of the United States. Upon making sales as described just above, the respondent has caused the said fluid to be transported from his said principal place of business to the said purchasers at their respective points of location.

PAR. 2. The product put out by the Ethyl Gasoline Corporation is commonly known and styled "Ethyl", and since the year 1925 has been very extensively advertised throughout the United States in magazines having national circulation such as Saturday Evening Post, Collier's, Liberty, Literary Digest, Harper's Magazine, Current History and many others, and also in newspapers having a wide regional circulation in various sections of the United States. There has been expended by the Ethyl Gasoline Corporation in advertising Ethyl gasoline approximately \$8,000,000 from 1925 to 1932, and there has been expended by the various vendees of the Ethyl Gasoline Corporation in advertising the high test, antiknock motor fuel made by mixing the product of the Ethyl Gasoline Corporation with their respective gasolines, the sum of approximately \$10,000,000.

The American Oil Co. produces and sells a gasoline under the name "Amoco", which is a benzol blend. Sherwood Bros. also produce and sell a benzol blend gasoline under the name "Betholene". Benzol is a substance with very little tendency to knock, so that if a sufficient quantity of benzol be blended with gasoline the gasoline will have antiknock value. Such blended fuels usually command a premium of from 3 to 5 cents per gallon above the so-called regular gasolines. Approximately \$1,000,000 a year has been spent in advertising Amoco, and substantial sums have been expended in advertising Betholene.

Other oil companies have produced and sold motor fuels which had antiknock value at a premium. Such companies include Cities Service Co. with its "Kool Motor" gasoline; the Sinclair Oil Co. with its "Sinclair H. C."; the Gulf Refining Co. with its "Gulf No-Nox"; the Standard Oil Co. of New Jersey with its "Esso". Substantial sums have been spent by each of the above-named companies in advertising their particular anti-knock gasoline.

PAR. 3. The respondent sells his "Ester Compound" to owners or operators of filling stations throughout the country, and ships his compound usually in 5-gallon containers. The "Ester Compound" is mixed at the filling stations with the straight, ordinary or regular gasoline handled at said stations. In order to promote

the sale of his "Ester Compound" the respondent makes use of circulars or pamphlets which he distributes to vendees or prospective vendees of the "Ester Compound" and in such circulars or pamphlets makes the following representations:

**"ESTER"**

**A GASOLINE TONIC WITH "IT"**

Greater independence and profits are assured the gasoline distributor by using "Ester" compound blended with his own brand of gasoline. It produces a merited premium priced motor fuel, correctly colored red for identification.

<b>"IT"</b>	REDUCES DETONATION
	MINIMIZES CARBON AND NEUTRALIZES THE ACTION OF GUM
	LUBRICATES THE COMBUSTION CYCLE
	CORRECTS OTHER DEFECTS IN GASOLINE
	CONTAINS NO POISONOUS METAL COMPOUNDS

"Ester" compound is an organic compound. It decreases the heat in the explosion chamber, and at the same time increases the expansive force of the explosion. It also tends to eliminate carbon formation. This reduces fuel knocks.

"Ester" compound acts as a powerful oxidizing agent and attacks the carbon that has adhered to the various parts of the combustion chamber.

Another distinctive feature of "Ester" compound is the bond of lubrication that it imparts in the combustion cycle. This is an intensive heat resisting property that gives lubrication to the utmost point in the fire zone, assuring maximum compression, and keeps the valves from sticking.

Many gasolines on the market have an unbalanced composition, causing sluggishness, poor starting and uneven acceleration of the motor. "Ester" compound is compounded to correct these defects and imparts to the gasoline a smoother, better balanced and flexible performance. The motor will function on less r.p.m. in traffic and accelerate quicker.

The respondent also furnished to his vendees a globe or globes intended for installation upon the pump from which the gasoline treated with the respondent's fluid was sold to the consuming public. On said globes appeared the words:

Ester with  
Ester Compound  
Gasoline

PAR. 4. The use by the respondent in advertising and describing his product of the words "it reduces detonation" and "reduces fuel knocks" has the capacity and tendency to and does mislead and deceive gasoline dealers and automobile service station employees into believing that said product when mixed with gasoline produces what is commonly known as an antiknock motor fuel.

Dr. Graham Edgar, chemist, whose work has been almost entirely with motor fuels with particular reference to antiknock action, and

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who has come in contact with practically all types of gasolines employed for motor fuels and who is acquainted with the result of tests of 30,000 samples of gasoline a year, testified regarding the meaning of the term antiknock (Tr. 164) :

Of all the properties which a fuel must have to be of use for an internal combustion engine, its tendency to detonate or knock is by far the most important, because the tendency of a fuel to knock limits the efficiency with which the heat of combustion of the fuel may be converted into power by the engine. It limits what we call the thermal efficiency, and for this reason this tendency is the most important property that a fuel can have. The term "antiknock" value is not a very satisfactory term, being rather vague unless we measure it by some sort of a scale. The scale which is at present employed in this country for the purpose of measuring the tendency of a fuel to knock is known as the octane number scale. The octane number scale is a scale based upon a comparison of gasoline with a pure chemical substance, known as octane, which has practically no tendency to knock, and with a second substance known as heptane, which has a greater tendency to knock than any commercial gasoline. It is possible therefore to express the tendency of a gasoline to knock, or what is commonly called its antiknock value, in terms of different proportions of these two substances, heptane and octane. If a gasoline is equal in antiknock value to a blend of 50 percent heptane and 50 percent octane, we say it has an octane number of 50. If it is 75 percent octane and 25 percent heptane, we say that it has an octane number of 75, so that instead of saying antiknock value in a loose sense, it is best to refer to the antiknock value of gasoline by reference to the scale for expressing such antiknock value, namely, this octane number scale.

This witness also testified (Tr. 167) :

The full power obtainable in a given engine from fuel, can be obtained only when the fuel is not knocking. Whenever the fuel knocks in a car, a part of the heat of combustion which would normally be converted into power is lost, as heat, more heat goes to the cooling water, more heat goes to the exhaust, and less heat is converted into power, whenever the fuel knocks in an engine.

\* \* \* It is impossible to get the full power out of any fuel in any engine if that fuel is knocking in the engine. It is not because the combustion is incomplete, but it is because the combustion is different. What actually happens in a nonknocking engine, if you may try to visualize it, we ignite the combustible charge with a spark, and the flame starts at the spark and moves across the cylinder at a rather rapid but quite steady rate in a nonknocking engine, and the expansion of the hot gases press on the piston, move it down and give the power. Now, in a knocking gasoline we ignite the charge in exactly the same way and the flame starts to move across the cylinder in the same way it does in a nonknocking fuel, but before it gets across the cylinder it suddenly changes into a practically instantaneous explosion which fills the rest of the cylinder, the remaining part of the charge burns instantly, instead of at a moderate rate, and very high local temperatures are produced, so that heat is radiated out to the jackets of the cylinder and is thus lost for being converted into power.

\* \* \* It also gives rise to a sound, a high-pitched metallic sound, which is known to the average automobile driver in this country as a knock, or in England as a "pink". This is a high-pitched metallic sound, quite different from the normal sound of the explosion in the engine.

PAR. 5. After receipt of respondent's "Ester", the same is mixed by the filling station operator in the proportions of 1 gallon of "Ester" to 1,000 gallons of gasoline, and the resulting mixture is sold at a premium over the price of the straight, ordinary or regular gasoline, the premium charged for the "Ester" mixture varying from 1 cent to 3 cents per gallon, depending on the locality. One filling station operator at Little Rock testified that gasoline with "Ester" was sold as a better gasoline than plain gas, and that it was sold at 1 cent higher than plain gas. Other filling station employees in Little Rock testified that they sold the gasoline mixed with "Ester" at 17 cents while plain gas was sold by them for 15 cents. Still others testified that gasoline mixed with "Ester" was sold at 15 cents while plain gasoline was sold for 12 cents. At Pine Bluff, Ark., the premium for gasoline containing "Ester" appeared to be 3 cents; at Nashville, Tenn., 3 cents; at Memphis, Tenn., 3 cents; and at Baton Rouge, La., it was 2 cents at some stations and 3 cents at other stations.

PAR. 6. Gasoline dealers and automobile service station employees who buy "Ester Compound" from the respondent, and who sell the resulting mixture to the consuming public, consider that it is similar to "Ethyl" and "Esso" and so represent to their customers. The resulting mixture is variously represented by the dealers and service station employees to be an antiknock or high compression gas. The several witnesses from service stations testified to the following effect:

Have been selling it as antiknock reducing carbon, high test.

Sell the "Ester" as red gas, did not represent it to be antiknock but sign on pump said antiknock.

The globe over the pump where the red gas is sold has the words antiknock on it.

"Ester" is an antiknock, high compression gas.

I don't tell customers it is high test. I call it red gas and if they stop at the red gas pump, I ask them if they want red gas or plain and when they tell me red gas I wait on them.

I sold the red gas and if anybody wanted a high gravity gasoline, I would tell them yes sir, and I referred them to the red gas.

We sell it as red gas, antiknock or if the customer wants to know what it is, wants to know if it is Ethyl, we tell them that it is not, that it is "Ester Compound" mixed with antiknock white gasoline.

We sell this red gas as high test, antiknock.

We sell the red gas as a premium, antiknock gasoline and in talking to customers tell them that the red antiknock gas is better than the white antiknock gas.

I mix it with "Ester" fluid and sell it as a red antiknock premium gas.

Use "Ester" fluid for the red antiknock gasoline, refer to the red gas as an antiknock gas because their literature tells me that it makes an antiknock gas when added to gasoline.

PAR. 7. The term "Ethyl" has become well known to gasoline dealers and the consuming public as describing a product which when added to gasoline produces a motor fuel with antiknock value. The term "Esso" has become well known to gasoline dealers and the consuming public as describing a motor fuel having antiknock quality. Gasoline dealers and automobile service station employees who buy "Ester" from the respondent and who sell the resulting mixture to the consuming public believe that it is similar to "Ethyl" and "Esso" and so represent to their customers. This belief and passing on to their customers is facilitated by the similarity of the word "Ester" to the words "Ethyl" and "Esso."

PAR. 8. The gasolines to which is added the product of the Ethyl Gasoline Corporation, Tetra-Ethyl lead, and the gasolines blended with benzol are sold throughout the United States at a premium varying from 2 to 5 cents over the price received at the same filling station for straight, ordinary or regular gasolines, and are known to the public as premium, high test, high compression, antiknock gasolines.

PAR. 9. The Ethyl Gasoline Corporation sells its product Ethyl to over a hundred manufacturers, refiners, and vendors of gasoline and these vendees of the Ethyl Gasoline Corporation mix the product called "Ethyl" with their gasoline and sell in interstate commerce to owners or operators of gasoline filling stations throughout the United States. The respondent's product is in competition with the product of the Ethyl Gasoline Corporation and is in competition with the gasolines of the various manufacturers, refiners, and vendors who sell their gasolines after mixing Ethyl therewith. The respondent's product is in competition with other high test, antiknock or premium gasolines such as Amoco, Betholene, Kool Motor, Sinclair H. C., and Gulf No-Nox. Respondent's product after mixing with gasoline is also in competition with straight, ordinary or regular gasolines which are sold without a premium.

PAR. 10. Samples of the respondent's product "Ester" were obtained from the respondent and in open market and forwarded to the Bureau of Standards, Washington, D.C., where the same were subjected to chemical analyses and to engine tests to determine the effect of "Ester Compound" when mixed with the fuel of a gasoline engine, on the operation of the engine.

Two reports were submitted by the Bureau of Standards and are in evidence. The one bearing date June 13, 1931 (Com. Ex. 25), concludes that the use of Ester Compound made no visible or audible difference in the operation of either of the engines in which it was tried, that the use of Ester Compound in the proportion described

by the distributor makes no measurable difference in the operation of an engine.

The report dated May 20, 1932 (Com. Ex. 24), concludes that the result of all tests agree that Ester Compound is without measurable effect as a detonation suppressor, that Ester Compound has no measurable effect on power, economy, or any other phase of engine performance, that the evidence is therefore highly conclusive that the operator of a gasoline engine would derive no tangible advantage from the use of Ester Compound. The report concludes with the following language:

The result of this test, which has been made with apparatus and materials suited to the purpose, indicate that Ester Compound used in the manner recommended by its maker is without detectable effect on the power, economy or general performance of a gasoline engine or on the knocking propensity of its fuel. (Com. Ex. 24, p. 8.)

The testimony of Richard S. Dill of the Bureau of Standards, under whose direction the engine tests of the fuel mixture containing Ester Compound were made, sustains and corroborates the reports from the Bureau of Standards referred to above, this witness testifying that the Ester Compound did not change the knocking propensity of the fuel, did not reduce the detonation and would not correct other defects in gasoline; that Ester mixed with gasoline was found to have no effect on power or economy of a gasoline engine when used in the manner specified in respondent's literature, that the addition of Ester Compound to ordinary gasoline did not change the octane number of the base fuel, that a gasoline containing Ester would be of no more value than gasoline not containing it, that as far as they were able to determine in their tests the Ester Compound did nothing to the gasoline. No advantage to be gained by lubricating the walls of the combustion chamber.

Dr. Graham Edgar, chemist, previously referred to in these findings, testified:

If a compound, Ester for example, was mixed with a gasoline which gasoline before blending showed an octane count of 63, and after the blending showed still an octane count of 63, the antiknock value of the gasoline is in no way changed and the material could in no way be classed as an antiknock. The octane number of a gasoline is the measure of its tendency to detonate, therefore if the octane number is not changed, there can be no change in tendency to knock or detonate.

PAR. 11. Respondent testified that he sold approximately 1,000 gallons of Ester Compound in 1930, and between 500 and 600 gallons in 1931. This for two years would give approximately 1,500,000 gallons of gasoline for sale in the United States, and he testified he

practically covered the entire United States. Other testimony indicates that the respondent was understating the amount of business done by him, for it is shown by the testimony of users of the Ester Compound that at the time of the hearings in March, 1932, the sales in Little Rock, Pine Bluff, Nashville, Memphis, Baton Rouge, and Lake Charles, only six cities in three States, had been and were at the rate of approximately 705,700 gallons of gasoline mixed with Ester Compound per annum. And in addition to the witnesses called in the above-mentioned cities the respondent testified as to the names of thirteen other customers in the States of Arkansas, Tennessee, Indiana, Texas, Nebraska, North Carolina, South Carolina, California, and Mississippi, and further testified that these were not nearly all of his customers and that he also had distributing agencies in West Virginia and Utah.

PAR. 12. The respondent sells his product "Ester" to owners and operators of gasoline filling stations throughout the United States, who mix the said product with the straight gasoline which they carry and sell same to the public. The Commission finds that the statements of the respondent of and concerning his product are false and misleading, that the said statements of respondent have a tendency to deceive and have deceived his vendees, and that as a result of said false and misleading statements his said vendees have in turn passed the deception on to the consuming public.

The Commission finds that the respondent has furnished to owners and operators of gasoline filling stations throughout the United States the means whereby said owners and operators are enabled to deceive and mislead the consuming public into believing that the motor fuel resulting from the mixture of respondent's product with straight gasoline improves said gasoline all to the injury of the public and prejudice of respondent's competitors.

The Commission finds respondent's product to be of no value to the purchasers of the gasoline mixed therewith.

The Commission finds that as a result of the false and misleading statements, representations, and advertisements of the respondent the retailers handling respondent's product have increased their sales of gasoline at the expense of competing retailers of gasoline who honestly designate and describe the same as either straight gasoline or as high test, high compression or antiknock gasoline.

The interstate distributors of gasolines who honestly designate and describe the same have been injured as a result of the false and misleading statements, representations, and advertisements of the respondent.



## CONCLUSION

By reason of the aforesaid acts and practices of the respondent as hereinbefore set out, it is concluded by the Commission that the acts and practices of respondent are clearly unfair methods of competition in interstate commerce, and that such practices have the effect of unfairly diverting trade from respondent's competitors, and that the acts and things hereinabove set out are to the prejudice and injury of the public, and that such acts and practices 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 the brief 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 respondent William H. Johnsen, individually or trading as Technical Chemical Co., his agents, servants, and employees, in connection with the advertising, offering for sale or sale in interstate commerce of his product heretofore described and designated by respondent as "Ester" and "Ester Compound", for use in treating motor fuel and gasoline, cease and desist from using the following statements or representations, or any of them, or any statement or representation of like effect:

- (a) A Gasoline Tonic with "It",
- (b) That said product, when mixed with gasoline and used as a motor fuel,
  - (1) Produces a merited premium priced motor fuel,
  - (2) Reduces detonation,
  - (3) Minimizes carbon and neutralizes the action of gum,
  - (4) Lubricates the combustion cycle,
  - (5) Corrects other defects in gasoline,
  - (6) Decreases the heat in the explosion chamber,
  - (7) Increases the expansive force of the explosion,
  - (8) Tends to eliminate carbon formation,
  - (9) Reduces fuel knocks,
  - (10) Imparts to said gasoline or motor fuel a smoother, better balanced and flexible performance,
  - (11) Causes the motor to function on less revolutions per minute in traffic and accelerate quicker;

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(c) Acts as an oxidizing agent and attacks the carbon that has adhered to the various parts of the combustion chamber;

(d) That a feature of said product is the bond of lubrication that it imparts in the combustion cycle;

(e) Has heat resisting properties which give lubrication to the utmost point in the fire zone, assuring maximum compression, and keeps the valves from sticking;

(f) That the said product, when mixed with gasoline and used as a motor fuel, improves the said gasoline, or that it increases the antiknock properties of said gasoline in any respect.

*It is further ordered,* That the respondent William H. Johnsen, individually and trading as Technical Chemical Co., 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 hereinabove set forth.

## Complaint

IN THE MATTER OF  
THE WEISS & KLAU COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2060. Complaint, July 11, 1932—Order, Dec. 6, 1932*

Consent order requiring respondent, its agents, etc., to cease and desist, in connection with sale and distribution of window shades in interstate commerce, from representing, designating, describing or labeling, as "Mill Run", window shades not in fact made from cloth which is the entire run of the mill, or which are known to the trade or purchasing public as seconds", or from using any other words aforesaid so as to import that such shades are made from cloth which is the entire and true run of the mill.

*Mr. Richard P. Whiteley* for the Commission.

*Mr. Daniel R. Forbes*, 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 Weiss & Klau Co., a corporation, hereinafter referred to as respondent, has been and now 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 in that respect as follows:

PARAGRAPH 1. Respondent, The Weiss & Klau 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 located in the City of New York in said State. Respondent is now and, for more than one year last past, has been engaged in the sale and distribution of window shades in commerce between and among the various States of the United States, and has caused said products when sold, to be shipped from its place of business in the City and State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its business, the respondent, The Weiss & Klau Co., was at all times herein referred to in competition with other corporations, partnerships, firms, and individuals likewise engaged in the sale and distribution in interstate commerce of window shades.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, The Weiss & Klau Co., in soliciting the sale of and selling and distributing window shades in interstate commerce between and among various States of the United States, for more than one year last past has represented, designated, described, and

referred to the said window shades as "Mill Run", and has attached or caused to be attached or affixed to said window shades so sold and distributed by it in interstate commerce, labels, designating the said window shades as "Mill Run", so as to import or imply that the said shades are made either wholly or substantially from first quality cloth, or from the run of the mill, when in truth and in fact respondent's window shades, so advertised, labeled, sold and distributed by it in interstate commerce, were made in whole or substantially from defective or partially defective cloth, known to the trade and purchasing public as "seconds".

PAR. 3. The above and foregoing representations, statements, and labels of respondent, by means of which it has offered for sale and sold, or is selling its products as set forth in this complaint, have had the capacity and tendency to mislead and deceive and/or have misled and deceived the purchasing public into the belief that the said representations, statements, and labels are true, and have tended to induce and have induced the purchase of respondent's window shades in reliance upon such belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured, competitors of respondent.

PAR. 4. The above acts and things done by respondent as aforesaid, 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 11th day of July, 1932, issued its complaint against The Weiss & Klau 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 the 21st day of November, 1932, respondent entered its appearance in this proceeding and filed its answer to said complaint, admitting that it is and has been engaged in the sale and distribution of window shades in interstate commerce as alleged in said complaint, and that for more than a year prior to the issuance of said complaint it has represented, designated, described, and labeled its aforesaid

window shades so sold and distributed by it in interstate commerce as "Mill Run", when in fact said window shades were not the entire run of the mill but were that part of the run of the mill which remained after the first quality shade cloth and the seriously defective shade cloth had been separated and removed, and when in fact said shades sold by respondent under the designation or label "Mill Run" were "seconds" as known to the trade and purchasing public. Respondent further answering states that it has already discontinued the use of the designation "Mill Run" on its labels and in all other advertising matter and in its description of its said shades and consents that the Commission may make, enter and serve upon it an order to cease and desist from the violations of law alleged in the complaint and more specifically enumerated in the following order:

The said answer of respondent was duly accepted and filed by the Commission and thereupon this proceeding came on before the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, and the Commission being now fully advised in the premises,

*It is now ordered*, That the respondent, The Weiss & Klau Co., a corporation, and its agents, representatives, servants, and employees and successors in business in connection with or in the course of the sale and distribution of window shades in interstate commerce, do cease and desist:

1. From representing, designating, describing, or labeling as "Mill Run" the window shades sold or distributed by it which are not in fact made from cloth which is the entire and true run of the mill.

2. From representing, designating, describing, or labeling as "Mill Run" window shades which are known to the trade or the purchasing public as "seconds".

3. From representing, designating, describing, or labeling window shades with the words "Mill Run" or with any other word or words which import or imply that said window shades are made from cloth which is the entire and true run of the mill when said window shades are in fact what are known to the trade and purchasing public as "seconds" or when said window shades are not in fact the entire and true run of the mill.

*It is further ordered*, That said respondent, The Weiss & Klau Co., shall within 60 days after service upon it of a copy of the 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.

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IN THE MATTER OF  
NORTHERN FRUIT & PRODUCE COMPANY AND  
TED E. WOLFE

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

*Docket 2065. Complaint, Oct. 3, 1932—Order, Dec. 6, 1932*

Consent order requiring respondents and their agents, etc., to cease and desist, in connection with sale or offer of seed potatoes in interstate commerce, from representing that inspection or certification by respondent individual is certification or inspection by the "Mid-West" or an other "agricultural institution", or that potatoes in question have been inspected and certified by anyone or in any manner other than is actually the case.

*Mr. PGad B. Morehouse* 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 Northern Fruit and Produce Co., a corporation, hereinafter referred to as a company, and Ted E. Wolfe, an individual, and each of them under the name and style of "Mid-West Agricultural Institute", 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:

PARAGRAPHS 1. The respondent Northern Fruit & Produce Co. is a corporation organized, existing, and doing business in the State of Illinois, having its office and principal place of business in the city of Chicago, State of Illinois. The respondent Ted E. Wolfe is and has been an employee of the respondent company as an inspector of seed potatoes under arrangements and circumstances hereinafter more fully set out. Both respondents in the course and conduct of the respondent company's business have used the name and style "Mid-West Agricultural Institute".

For approximately two years last past the respondent company has been engaged in the business of buying and selling seed potatoes and also operating as a commission merchant dealing in said produce, purchasing seed potatoes in carload lots from the sellers located in various States other than the State of Illinois and shipped by these sellers from such other States to the company at Chicago, Ill. In the course and conduct of its business, while the said carloads of

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seed potatoes are in Chicago awaiting resale and transshipment, the company employs the respondent Wolfe to certify and tag the bags in which said potatoes are contained. Respondent Wolfe, designating himself as "Mid-West Agricultural Institute", for hire, upon the instructions of the company, thereupon certifies and tags the said seed potatoes by attaching to the said bags tags in words and figures following:

<p>C E R T I F I E D</p> <p>M I D - W E S T</p> <p>A G R I C U L T U R A L</p> <p>I N S T I T U T E</p> <p>S E E D P O T A T O E S</p>
--

(Front)

<p>C E R T I F I E D S E E D P O T A T O E S</p> <p>Variety-----</p> <p>The potatoes packed in this bag are improved seed carefully selected and graded and have been inspected and certified to by an authorized inspector for the Mid-West Agricultural Institute. At least 90 percent of tubers conform to characteristic type of variety.</p> <p>M I D - W E S T</p> <p>A G R I C U L T U R A L I N S T I T U T E</p> <p>Chicago, Ill.</p> <p>----Lbs. Net Weight When Packed</p>
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(Reverse)

PAR. 2. In the course and conduct of his employment and while the seed potatoes are in the cars in the railroad yards at Chicago, Ill.,

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awaiting rebilling to final destination, respondent Wolfe places the aforesaid certificates and tags upon the sacks in which the seed potatoes are contained, with the purpose and result of having said certificates and tags transported with the potatoes from the State of Illinois in and through various other States of the Union all in aid and furtherance of respondent company's acts of unfair competition herein set forth.

The said potatoes thus certified and tagged by respondent Wolfe, respondent company acting sometimes as broker and sometimes as a middleman, transships and resells to various buyers, other commission merchants, middlemen, wholesalers, jobbers, and chain stores at a price which includes a premium, or an advance price from that price which is charged for uncertified seed potatoes which price is charged and received by reason of such certification and tagging.

PAR. 3. Respondent company causes the said seed potatoes to be reshipped from the city of Chicago in the State of Illinois into and through various other States of the United States to the purchaser's thereof.

In the course and conduct of its business as aforesaid the respondent company is in competition with other individuals, partnerships and corporations engaged in the sale and distribution in interstate commerce of seed potatoes.

PAR. 4. For more than two years last past through the efforts of State and local organizations, educational institutions, and widely disseminated information by State and National agencies, potato planters have come to recognize the value of planting seed potatoes certified to be free from various diseases deleteriously affecting crop production such as "dwarfing", "running out", or "mosaic", some of which diseases are destructive, soil inoculating, and can only be detected by inspection of the growing seed potato plant. Seed potatoes are grown almost exclusively in those States in the northern half of the United States and transshipped with Chicago, Ill., as a central distributing point to States in the southern portion of the United States and virtually all of the seed potato raising States have made provisions for field inspection conducted by trained men during the growing season, generally under the auspices of the State agricultural college or other organization or institution. After such inspection there is customarily a certificate issued which the grower may attach to his bags of seed potatoes prior to shipment. From the foregoing educational propaganda, customs and practices in the seed potato trade, wholesalers, jobbers, retailers, and many of the consuming public have come to associate, where seed potatoes are concerned, the word "certified" with a product which, while still grow-



ing, has been competently and disinterestedly inspected for freedom from destructive plant diseases, under the supervision of an accredited Federal or State institution or organization, and also have come to associate the words, "agricultural institution", where used in connection with seed potatoes, with an accredited educational or scientific institution. By reason of such trade practices and association of ideas purchasers have been and are willing to and do pay higher prices for seed potatoes which have been certified in such manner.

PAR. 5. Under and by reason of the foregoing circumstances the certification and tagging of said seed potatoes done by respondent Wolfe at the instance of the company as above set out, respondent company in the course and conduct of its business, falsely represents and has represented to purchasers and prospective purchasers that such seed potatoes have been competently and disinterestedly inspected, and that they are therefore free from "dwarfing", "running out", "mosaic", and any other potato disease determinable by inspection of the growing seed potato plant, when in truth and in fact such is not the case; and the prospective purchasers, believing and relying upon the truth of such representations, purchase the seed potatoes at a price higher than they would for seed potatoes not inspected and certified in the manner in which they believe respondent company's seed potatoes have been inspected and certified.

PAR. 6. In the course and conduct of its business as aforesaid, by means of the certification and tagging of said seed potatoes in the manner above set out, respondent company falsely represents to purchasers and prospective purchasers that its said seed potatoes are freer from "dwarfing", "running out", and "mosaic", and other potato plant diseases than seed potatoes which have not been inspected while growing and thereafter certified by competent and disinterested persons or organizations, and the prospective purchasers believe and rely upon the truth of said representation. Such representation is passed on by respondent company to, through and by the various buyers, commission merchants, middlemen, wholesalers, jobbers, and chain stores aforesaid, to the ultimate purchasers who, believing and relying thereon, purchase and plant seed potatoes of a quality and condition productive of inferior crops.

PAR. 7. In the course and conduct of his employment by respondent company as aforesaid, the respondent Wolfe, in procuring and affixing the aforesaid tags and certificates to the sacks of seed potatoes while enroute from the source of their production to their final destination into and through various States of the United States, places in the hands of respondent company the means of deceiving its prospective purchasers and the ultimate purchasers

of said seed potatoes, as to the pedigree, quality, value and kind of said seed potatoes so purchased and also as to the nature and kind of inspection to which such seed potatoes have been subjected.

PAR. 8. The aforesaid methods used by respondent company in the course and conduct of its business, aided and abetted for hire by respondent Wolfe have a tendency to and do unfairly result in (a) respondent company's being able to sell its so-called "agricultural-institute-certified" seed potatoes at a greater profit than can be obtained by competitors who do not misrepresent to their prospective purchasers in the manner and form hereinabove set out, and (b) respondent company's being able to undersell those of its competitors who in the course and conduct of their business have had their seed potatoes field-inspected by competent disinterested persons under supervision of accredited National or State associations or institutions and who, after paying the reasonable and usual expenses of such inspection and certification (greater than the expenses of respondent company's so-called inspection and certification), are unable to compete with respondent company at a profit.

PAR. 9. The foregoing methods of competition and each of them are to the prejudice of competitors of the respondent company, to the prejudice of the public, and have a tendency to divert trade from respondent company's competitors to respondent and constitute unfair methods of competition in interstate commerce within the intent and meaning 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 come on for final hearing by the Federal Trade Commission upon the respondents' answer waiving all further procedure and consenting that the Commission may make, enter, and serve upon them an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises:

*It is now ordered*, That the respondents, Northern Fruit & Produce Co., a corporation, Ted E. Wolfe, an individual and the agents, representatives, servants, and employees of each of them, in connection with the sale or offering for sale in interstate commerce of seed potatoes cease and desist from representing directly or by implication,

That inspection or certification by the respondent, Ted E. Wolfe, is certification or inspection by the "Mid-West" or any

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## Order

other "agricultural institution" or that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case.

*It is further ordered,* That the respondents and each of them shall within 60 days from the date of 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 and each of them have complied with the order herein set forth.

Complaint

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IN THE MATTER OF  
WEIL CORSET COMPANY

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

*Docket 1965. Complaint, Aug. 13, 1931—Order, Dec. 7, 1932*

- Consent order requiring respondent corporation, its agents, etc., in connection with sale or distribution of abdominal belts or corsets in interstate commerce to cease and desist from representing that said article, Instantly makes the wearer look years younger and reduces the waist at once from 2 to 4 inches;
- Works for the wearer every second, day and night, and reduces much more rapidly than ordinary massage, actually taking up inch after inch through the deep breathing facilitated and the better circulation brought about, and is not to be compared, with its easy convenient time saving reducing method, to strenuous gymnastics with their effect on the heart, or weakening starvation diets;
- Is based on the principle which has the unqualified endorsement of the country's greatest athletes, trainers, and physicians, making it possible for anyone, through the use thereof, without any effort, fasting or self-denial, to obtain easily a normal waistline, and substitutes good solid tissue for useless fat, bringing long sought relief to its users in the easiest, quickest, and most pleasant way imaginable; and
- Is priced at a special or reduced figure or less than the regular figure, or is sent on free trial, when former is not the case, or deposit or payment is required prior to receipt and trial; subject to qualifications noted.

*Mr. Richard P. Whiteley* for the Commission.

*Kaplan, Kosman & Streusand*, 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 the Weil Corset Co., a corporation, hereinafter referred to as respondent, has been and now 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. That the respondent, Weil Corset Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located in the city of New Haven in said State. It is now, and, for more than two years last past has been engaged in the manufacture of corsets, abdominal belts, suspensories, shoulder braces, and other similar articles, and in the sale and distribution of

such products in commerce between and among various States of the United States, has caused said products, when sold, to be shipped from its place of business in the State of Connecticut, to purchasers thereof located in a State or States of the United States other than the State of Connecticut. In the course and conduct of its business, Weil Corset 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 corsets, abdominal belts, suspensories, shoulder braces, and other articles used for similar purposes.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, Weil Corset Co., in soliciting the sale of and selling certain of aforesaid products, to wit, abdominal belts, in interstate commerce between and among various States of the United States, for more than two years last past has caused and now causes advertisements to be inserted in publications having general circulation between and among the various States of the United States and by means of other advertising matter circulated by it in interstate commerce as aforesaid has made the following statements and representations concerning its said abdominal belts:

New Youth-Giving Belt reduces waistline quickly.

Instantly makes you look inches thinner and years younger and actually massges away fat every second while you wear it.

Here's a new easy way to get rid of that bulky, useless, disfiguring fat without any effort on your part.

A new kind of belt has been perfected which actually takes off fat in an easy gentle way—just like an expert masseur.

The moment you put on this new self-massaging belt your waist is instantly reduced from 2 to 4 inches.

You are filled with a wonderful new energy, and look and feel 10 to 15 years younger.

As shown below, every move of your body, walking, climbing stairs, merely breathing as you sit—causes the Weil Belt to massage your abdomen.

It is working for you every second.

Reduce the way athletes do.

It is so constructed that, as you wear it, every breath you take and every move you make imparts a constant gentle automatic massage to every inch of the abdomen.

It works for you every second, day and night, and reduces much more rapidly than ordinary massage.

The Weil Belt is made of the same kind of scientifically treated rubber that is used by hundreds of professional athletes and jockeys because it not only reduces quickly but at the same time preserves their strength.

Special trial offer.

Special 10-day trial offer being made.

That's just what we hope this free trial will do. But we naturally can't be expected to try this plan forever. So we have set a definite limit of 10 days.

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Let us send this marvelous All Rubber Reducing Belt on trial, then wear it 10 days at our expense.

This scientifically constructed live rubber belt does not simply make you look thinner. It actually takes off inch after inch directly and indirectly through the deep breathing it facilitates and the better circulation of the blood it brings about which helps carry off clogging weakening fat from the abdomen and elsewhere.

There is no comparison between this new easy convenient time-saving reducing method and the strenuous gymnastics which affect the heart, or starvation diets which weaken the system.

This remarkable live rubber self-massaging belt accomplishes the same results, but much more quickly, through simple, scientific massage without any risk, inconvenience or discomfort.

Even in the short space of 10 days you can see and measure the difference.

The Weil Belt is the original rubber reducing belt. Do not confuse it with the many imitations that have followed its tremendous success.

The Weil Rubber Reducing Belt is based on a principle that has the unqualified endorsement of the country's greatest athletes, professional trainers and physicians.

The Weil Rubber Reducing Belt is the easiest, safest, quickest, and cheapest way of reducing excess fat.

Prove it yourself without risking a cent.

I know that the Weil Belt is just the thing for reducing. I know that you can wear it in perfect comfort anywhere anytime.

I can hold open this free trial offer only 10 days.

How many inches would you like to reduce your waist? There is no excuse now for any man to permit his figure to be spoiled by excessive girth. There is no longer any reason why the system should be weakened and the nerves impaired by heavy, burdensome fat at the waistline. For a quick, easy method of relief has been discovered.

Science has found a delightfully easy way to remove excess flesh from the place where it is the most burdensome and weakening and where it causes the greatest disfigurement—the abdominal region. Without any effort, fasting or self-denials, and one can easily obtain a normal waistline.

And when this method is used, one regains at the same time, a wonderful new feeling of lightness, buoyancy, and energy such as he probably has not felt since this vitality sapping fat first began to accumulate.

This new invention—the Weil Rubber Reducing Belt—brings a long sought relief in the easiest, quickest, and most pleasant way imaginable. It brings health as well as form.

Those extra inches vanish quickly.

The Weil Rubber Reducing Belt offers that external aid which is so urgently needed.

Its operation is so easy that the wearer is hardly conscious of its presence, yet its results are certain and rapid.

The specially prepared and scientifically fitted rubber imparts a constant, gentle massage with every move one makes and every breath one takes.

It helps to dissolve the fat just as exercise does. At the same time it brings an increased, vigorous circulation of the blood, and that carries off the fat and eliminates it through the natural channels.

The Weil Rubber Reducing Belt creates conditions which are exactly opposite of those which allowed the fat to accumulate. It utilizes in a new way, and a way that is more convenient and less expensive, the well recognized value of massage.

Sent on free trial.

Obtain actual proof, without risking a penny, of its remarkable power to reduce your excess flesh quickly. Accept our offer of a free trial.

The efficient easy substitute for massage and exercise.

The Weil Rubber Reducing Belt produces the same results as an expert masseur.

It substitutes good solid tissues for the useless fat. But it does it so easily and so gently that you are unconscious of its action. You are conscious only of its results. They are shown by your tape measure, your scales and your mirror.

The principle through which the Weil Rubber Reducing Belt operates has been recognized ever since civilization began. The new thing is the belt itself, which substitutes an inexpensive, convenient method for the expensive, time-consuming methods of the past.

Massage no longer necessary.

The Weil Rubber Reducing Belt makes use of the very same principle. But it is more convenient. Instead of requiring daily trips to the masseur, it accomplishes its wonderful results by exerting an almost imperceptible but wonderfully effective massage.

In a comparison with massage it is a time saver and a money saver and it does its work just as effectively as does the masseur.

Made on the only correct principles.

That the Weil Rubber Reducing Belt is constructed along the only correct lines is evidenced by the fact that not a single failure has been reported by the users of our belts. Therefore, when one uses the Weil Rubber Reducing Belt he is assured of quick results, for he is using a means that has been well tried and has proved its worth in every instance.

Remember there is no discomfort. As powerful as is its action, its presence is unfelt.

Your scales, tape, and mirror and the admiring comments of your friends will be sufficient reminders that you have adopted this most efficient method of reducing.

You need the gentle, efficient, imperceptible massage of the Weil Rubber Reducing Belt to free you from the oppressive fat and substitute good solid muscular tissue in its place.

Then your health, your efficiency and your appearance will be so improved as to make you feel like a new person.

Use it for ten days without risking a penny.

When in truth and in fact the said abdominal belt is not a new youth-giving belt which reduces the waistline quickly; is not a new kind of belt which actually takes off fat in an easy, gentle way—just like an expert masseur; is not a self-massaging belt; is not so constructed that when worn every breath taken and every move impart a constant gentle automatic massage to every inch of the abdomen; is not efficient as a fat remover or reducer in all cases; is not the original rubber reducing belt; is not based on a principle

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that has the unqualified endorsement of the country's greatest athletes, professional trainers and physicians; is not the easiest, safest, quickest, and fastest way of reducing excess fat; is not just the thing for reducing; is not found by science to be a delightfully easy way to remove excess flesh from the abdominal region without any effort, fasting or self-denial; is not a new invention; is not made on the only correct principles; is not a substitute for massage; is not highly endorsed for its healthful principles by physicians everywhere, and is not productive of the same results as an expert masseur; and when in truth and in fact, the said abdominal belt, when used, will not massage away fat or rid the body of useless fat without any effort on the part of the user; will not cause the user to reduce the way athletes do; will not massage the abdomen while walking, climbing stairs, breathing or moving the body in any manner to an extent sufficient to remove fat; will not accomplish the same results as can be accomplished by scientific massage; will not help dissolve the fat as exercise does; will not create conditions which are opposite of those which allow fat to accumulate; will not substitute solid tissues for fat; will not cause the user to be filled with new energy; will not reduce flesh quickly and preserve the strength also; will not produce certain or rapid results; and when in truth and in fact, the wearing of said abdominal belt will not cause massaging, kneading or vibratory action on the abdomen or body to an extent sufficient to break down, absorb, dissolve or eliminate fatty tissues; and the said abdominal belt is not sent on free trial, but the prospective purchaser is required to make a deposit or payment prior to its receipt and trial; and the price of said belt is not special, reduced or less than the regular or prevailing price at which the said belt is regularly sold; and the time within which an offer may be accepted is not actually limited and orders received after the expiration of the stated limits are accepted.

PAR. 3. The above and foregoing representations in statements of respondent by means of which it has offered for sale and sold or is selling its products as set forth in this complaint, have had and have the capacity and tendency to mislead and deceive, and or have misled and deceived the purchasing public into the belief that the said representations are true, and have tended to induce, and have induced, the purchase of respondent's abdominal belts in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured, competitors of respondent.

PAR. 4. The above acts and things done by said respondent as aforesaid 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 13th day of August, 1931, issued its complaint against Weil Corset 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 16, 1931, respondent entered its appearance in this proceeding and filed its answer to said complaint formally stating in writing that it desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and consented that the Commission might make, enter, and serve upon it an order to cease and desist from the violations of the law alleged in the complaint and more specifically enumerated in the following order. Respondent also requested in said answer that the Commission proceed to final disposition of this proceeding upon said answer pursuant to the provisions of paragraph 2 of Rule III of the Commission's Rules of Practice and without further hearings.

The said answer of respondent was duly accepted and filed by the Commission, and thereupon this proceeding came on before the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, and the Commission being now fully advised in the premises:

*It is now ordered*, That respondent, Weil Corset Co., a corporation, its agents, representatives, servants, employees, and successors in business, in connection with or in the course of the sale or distribution of corsets, abdominal belts, suspensories, shoulder braces, or other articles used for similar purposes in interstate commerce, do cease and desist:

- (1) From representing that the abdominal belt or corset of respondent instantly makes the wearer look years younger.

(2) From representing that the moment the said belt or corset is put on it reduces the waist instantly from 2 to 4 inches.

(3) From representing that it works for the wearer every second, day and night, and reduces much more rapidly than ordinary massage.

(4) From representing that said belt or corset actually takes off inch after inch directly through the deep breathing it facilitates and the better circulation of the blood it brings about which helps carry off cloggy weakening fat from the abdomen and elsewhere.

(5) From representing that there is no comparison between this easy convenient time saving reducing method and the strenuous gymnastics which affect the heart, or starvation diets which weaken the system.

(6) From representing that said belt or corset is based on a principle that has the unqualified endorsement of the country's greatest athletes, professional trainers and physicians, or that without any effort, fasting or self-denials one can easily obtain a normal waistline through the use of said belt or corset.

(7) From representing that said belt or corset substitutes good solid tissue for the useless fat or that it brings a long sought relief to its users in the easiest, quickest and most pleasant way imaginable.

(8) From representing that the price of said corset or abdominal belt is special or reduced or less than the regular or prevailing price at which said corset or abdominal belt is regularly sold unless such be the fact, or that the said corset or abdominal belt is sent on free trial when the purchaser is required to make a deposit or payment prior to its receipt and trial, unless respondent, in said statement or advertisement, agrees that the purchase price of said corset or belt, together with the return postage, is to be refunded upon the request of the purchaser of the same.

*It is further ordered,* That said respondent, Weil Corset Co., 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  
WESTERN BOTTLE MANUFACTURING 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 2009. Complaint, Feb. 8, 1932—Decision, Dec. 12, 1932*

Where a corporation engaged in the sale and distribution of a tooth paste; in advertising the same in periodicals and papers of a wide circulation and in window display cards,

- (a) Represented that tests of its own paste and of competitive products, and photographs of three human mouths displaying the upper teeth, with different degrees of discoloration and cleanliness, assertedly demonstrating the relative cleansing efficiency and safety of its own product as contrasted with certain competitive products, were, respectively, tests and photographs made in the laboratory of a great American University; facts being tests in question were carried on by a university faculty member, assigned to duty with an affiliated research institute, and compensated by said corporation for the researches, tests, and photographs involved, none of which were authorized, made, checked, adopted, or approved by a university; and
- (b) Represented that the tests referred to showed that its paste was the only one of the ten that safely cleaned teeth without injury, and that its said preparation was not abrasive due to the presence therein of two polishing agents, instead of one; facts being that nature of tests in question did not warrant aforesaid claims of relative safety, and presence in its own, in fact slightly abrasive, paste, of a very harsh, abrasive, and of a much milder one, did not add any peculiar safety, virtue, or merit thereto;

With effect of deceiving retailers and ultimate purchasers throughout the various States into believing (1) that tests and photographs, authorized, made, checked, or adopted by a university, had demonstrated that its said paste was the only one of a number of competitive products that could be safely used without injury to the teeth, and (2) that it was safer to use the paste involved than the others due to presence therein of two polishing agents, and with capacity and tendency so to deceive and to divert trade to it from 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. PGad B. Morehouse* for the Commission.

*Ashcraft & Ashcraft*, 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, an Illinois corporation engaged in the sale of a tooth paste, and with principal place of business in Chicago, with adver-

tising falsely or misleadingly as to disinterested and expert institutional tests of its said product and its competitors', and results thereof, and qualities or properties of said product, and with using misleading trade name, 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 aforesaid, makes such statements and representations in advertisements published, circulated, and displayed, as that its so-called "Dr. West's Tooth Paste" (abbreviation from the trade name "Western Company" under which it conducts its business), in contrast with unidentified competitive products, some of which "may clean" and some of which "do not", "does clean and doubly polish teeth—quickly, safely", and refers to and features through depictions and descriptive matter in its said advertising results of tests assertedly made in the laboratory of a great American university as demonstrating the truth of its aforesaid assertions;<sup>1</sup> facts being tests and pictures were not authorized, checked, or adopted by a great university, but were the work (mostly carried on elsewhere than in said university's laboratory) of a chemist associated with such university, and the conditions of the tests were such that truth of statements made to effect that respondent's tooth paste was the only one of numerous competitive products that cleans, without scratching or injuring enamel on teeth, or can be safely used, was not established when the statements were made.

Respondent, further, as charged, accompanied a picture of two teeth with the statement, "Safely? Magnified photo of enamel after ten years' brushing with Doctor West's. No scratching or injury to the enamel", facts being "ten year brushing" referred to consisted of exposing an extracted tooth to brushing by a machine for about eight hours.

Respondent further, as charged, attributed the asserted safe effectiveness of its "Dr. West's tooth paste", to presence therein of "Two gentle polishers—the finest known", etc.—"can't scratch enamel, but working together \* \* \* can and do polish—as no one polisher alone can without risk of harshness"; fact being that claim of any peculiar merit due to "double polishing" or two polishers "working together" is without substantial basis.

The use by respondent, as alleged, of the trade name "Dr. West's", and the statement and representations of the respondent in its advertisements, "\* \* \*" have the capacity and tendency to deceive and

<sup>1</sup> Statements alleged in the complaint to have been made by respondent, in the foregoing connection, are set forth infra in the findings.

mislead, and do deceive and mislead, the public into the belief that respondent's tooth paste originated as and is the product of scientific and professional knowledge and skill of an individual, Dr. West, and that tests of a great university show it to be uniquely superior in effectiveness in cleaning the teeth and in safety to the teeth combined compared with many other unidentified tooth pastes on the market, thereby making said claims of superiority applicable by the public to any other tooth paste, and the use of said trade name, statements, and representations by respondent thereby have unfairly competed with and injured respondent's competitors in the sale of their products of tooth paste in interstate commerce"; 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 (38 Stat.L. 717), the Federal Trade Commission issued and served a complaint upon the respondent Western Bottle Manufacturing Co., 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 respondent before a trial examiner of the Commission duly appointed thereto. 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 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, Western Bottle Manufacturing Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located in the city of Chicago. It is, and has been engaged for several years last past, under the trade name of "Western Company", in the sale and distribution of a tooth paste under the trade designation "Dr. West's Tooth Paste", manufactured for it by the Comfort Manufacturing Co. of Chicago. In the conduct of its business as aforesaid, respondent causes its said product, Dr. West's Tooth Paste, to be shipped and transported from the State of Illinois into various other States

throughout the country. There are many manufacturers of tooth pastes whose products are in direct and substantial competition with respondent's product in the trade above described among the States.

PAR. 2. In the course and conduct of its business as aforesaid, with the purpose and effect of creating a large number of sales to the ultimate purchasers, respondent caused its tooth paste to be advertised widely in the Saturday Evening Post, Ladies Home Journal, Chicago Tribune, and other magazines and newspapers and window display placards. By means of such advertisements, respondent caused to be published photographic reproductions of the results of certain tests purporting to show the comparative cleaning, scratching, and erosive properties of its own and nine unnamed tooth pastes, to the disparagement of the latter, representing that the results were measured and photographed by a great university laboratory; that these results showed that Dr. West's was the only one of the ten that safely cleaned teeth without injury; that Dr. West's tooth paste was not abrasive by reason of some peculiar merit due to the presence among its ingredients of two polishing agents instead of one. In such advertisements respondent made the following statements and representations among others:

Some may clean; Some do not! Doctor West's Tooth Paste does clean and doubly polish teeth—quickly, safely.

(Followed by three pictures of human mouths displaying the upper teeth and showing different degrees of discoloration and cleanliness.)

Results measured and photographed by a great university laboratory. This is the most sensational demonstration of a tooth paste ever made; showing you exactly what it will do for your teeth in advance. These are accurate photographs of results of a great American university. This is what the laboratory found: (1) Some dentifrices do not clean. (2) Some dentifrices clean but injure enamel. (3) Some dentifrices do neither. (4) Doctor West's Tooth Paste cleans teeth—quickly, safely. It does not in any way scratch or injure tooth enamel.

In other forms of respondent's advertising, in connection with a picture of a tube of paste bearing the words "Doctor West's Tooth Paste", appeared:

Only tooth paste that cleans teeth safely; in university laboratory tests of ten dentifrices.

Just how sure are you about the tooth paste you used this morning? Here are some startling facts from a great university laboratory where ten dentifrices have just been tested. Seven do not clean, and of these seven, two injure enamel. Two dentifrices clean, but both injure enamel. Only one dentifrice—Doctor West's cleans teeth without injury to enamel.

What it really means is that you need guess no longer, in choosing a dentifrice to keep your teeth safely white and clean.

Here is what you learn from scientific tests, initiated and carried out in the laboratory of a great university. Ten typical tooth pastes were tested.

Some of them did not clean but scratched enamel. Some did not scratch and did not clean. Sharply singled out against this background of neutral or negative performance, Doctor West's Tooth Paste proved itself to be unquestionably outstanding—for (a) Really cleaning the teeth; (b) Without scratching the enamel!

Remarkable double polishing (no scouring) added to cleansing, provides the safe effectiveness Doctor West's Tooth Paste now demonstrates. Two gentle polishers—the finest known; especially perfected. They can't scratch enamel, but working together they can and do polish—as no one polisher alone can without risk of harshness.

PAR. 3. The facts and circumstances surrounding the tests and photographs with which this advertising is concerned are as follows:

For more than fifteen years last past an associate professor of biochemistry in the Pathological Department of University of Chicago has been employed by the Otho S. A. Sprague Memorial Institute to conduct research work. This institute has a fund of money which was set aside by Otho S. A. Sprague at the time of his death for the alleviation of the ills of mankind. It was stipulated by him that the men who were in charge of the work were to be connected with some large university, and the trustees of the institute made such a connection with the University of Chicago. All of the tests and most of the photographs referred to in paragraph 2, supra, were made by this associate professor who received his entire salary directly from the board of trustees from the Sprague Memorial Institute. His duties were confined exclusively to the above research work, and he did not instruct students at the university. In the spring or summer of 1929 he began some research work into diet and its effect upon the mouth and gums, at the instance of the Chicago Dental Research Club which was a club of some twelve practicing dentists who for eighteen years had been investigating various dental subjects. This work began in 1929 in an orphan asylum at Mooseheart, Ill., and the club paid the biochemist a salary. The chemist's testimony, however, was that the first work was done at his laboratory in Billings Hospital at the University of Chicago, where he had obtained a number of the patients of the Dental Club who gave him their history as to food, blood, dentifrices, etc.; he there tested the cleansing and scratching efficacy of different dentifrices used by these patients. From July, 1929, to December, 1930, this scientist received compensation and supplies from a competitor of respondent. Tests of scratching and abrasions were made on extracted teeth. Numerous photographs were taken showing the results with a camera having a lens producing 60 diameters magnification. Experiments were continued and

numerous photographs taken at the orphans home in Mooseheart, Ill., in October, 1929, using some 200 children for these experiments.

On January 27, 1930, the professor opened negotiations with respondent by writing for its tooth paste formula. By that time he had conducted scratching experiments on over twenty brands of tooth paste and cleansing experiments on seven brands. Such experiments included Dr. West's tooth paste and that of six leading competitive brands and the teeth of at least twenty patients had been photographed. At that time it appeared that Dr. West's tooth paste scratched the enamel. Respondent explained this to the professor by telling him that it was an old preparation of paste that had been tested, whereupon respondent's new formula was tested and found not to scratch. Respondent wished to have some of the photographs of experimental work showing the comparative cleansing action and scratching experiments with tooth pastes already tested, and also wanted further experiments and photographs made. Thereupon respondent placed this biochemist upon its pay roll and supplied needed equipment, including a machine for abrasion tests. Comparative erosive and scratching qualities of different brands of tooth paste on extracted teeth were tested by a certain tabulated number of brushing strokes delivered under a specific pressure. Under this arrangement \$2,000 was paid this employee of the Sprague Institute from May, 1930, to January, 1931, out of which he bought certain lenses and supplies amounting in all to about \$623. Some time in the fall of 1930 he was officially informed as a member of the Otho S. A. Sprague Memorial Institute that he had no right to make financial connections with outside interests and on January, 1931, he discontinued such connections.

On November 6, 1930, on the letterhead of the Otho S. A. Sprague Memorial Institute, criticising respondent for the use to which it had put his tests, the professor wrote to it, in part:

The statement that this work was carried out in the laboratories of a great university is only partially correct. Most of it was done elsewhere. The university is certainly not responsible for any of this work because as I have explained to you before a university endorses a piece of research by allowing this work to be published in a scientific journal. All reference to the university should, therefore, be eliminated from your advertising copy until the results have been published.

In his testimony he explained this written statement as being untrue and "very poor psychology" on his part, exercised in the hope of deterring respondent from using that form of advertising, and he took the position that his work upon which respondent's advertising was based was university work. During the 15 years of his



connection with the Sprague Institute, such of his other research investigations as had been formally approved by the university as an institution were published. At the time of the taking of the testimony in this case the research investigations upon which this respondent's advertising was based had not been published nor formally approved by the university as an institution.

Some of the photographs used in connection with the aforesaid advertising had no connection with the tests but were photographs taken in a commercial studio and substituted in the advertising for the photographs which had been taken by the professor for the reason that in the opinion of respondent's advertising counsel, the test photographs in some instances were too repulsive in appearance to give the proper advertising appeal.

After considering all the evidence, the Commission finds that the tests referred to in the aforesaid advertisements were not tests authorized, made, checked, and adopted by a university; and that the pictures of teeth published in connection with said advertising claims were not the result of the work of a university nor did any university as an institution authorize, approve, or adopt such comparative photographic results.

PAR. 4. The Commission finds to be false and misleading respondent's representations made expressly and by implication in its advertising that its tooth paste is the only one of ten competitive tooth pastes that can be used safely or without injury to the teeth.

The cleaning tests made under the circumstances above set forth were made briefly as follows: Sixty persons whose teeth had been stained with a solution to disclose plaques or dirty places on them brushed them under the direction of the professor for a period of three minutes with a wet soft tooth brush saturated with respondent's tooth paste and other groups of twenty or more persons made similar use of nine other typical tooth pastes. Respondent's tooth paste and two of the other brands almost invariably removed the plaques completely from the front teeth except in places where the brush bristles could not reach and thus produced the same effect as that given by a hard tooth brush without the use of any paste. The other seven brands did not usually remove all of the plaques and in some cases appeared not to remove any of them.

To ascertain the comparative scratching qualities of the different tooth pastes tested, a portion of the enamel of an extracted tooth free from scratches was brushed a thousand strokes or 100,000 strokes under a pressure of 50 grams or about one-ninth of a pound with a tooth brush kept saturated with respondent's paste. If the tooth

developed scratches it was polished before each brushing. The test was repeated five times with each paste. After each brushing the enamel was magnified sixty diameters and examined for scratches. The results as reported for respondent showed that some of the pastes scratched the enamel each time tested, some never scratched and some gave variable results, the material from one tube scratching and that from another not scratching and that samples of respondent's paste purchased at drug stores scratched enamel and other samples so purchased as well as samples furnished by respondent did not scratch. It was later reported to respondent by this professor that four of the competitive brands scratched, two of which cleaned and two of which failed to clean. Respondent changed its formula for its paste to include English instead of domestic chalk and put the new product on the market in 1929. Apparently the samples of its paste that scratched enamel were made under the old formula and those that did not scratch were made under the new formula. The tests on one of the other nine brands described by respondent as cleaning but scratching were made prior to May, 1930. In August, 1930, the makers of this brand changed their formula so that after October, 1930, the paste described in respondent's advertisements had either been removed from the market or was being gradually replaced by a new product not covered by the tests referred to by respondent. The testimony of a professor of pharmaceutical chemistry in the University of Iowa, for twenty-one years, and who also was consulting chemist for one of respondent's competitors showed that his tests for abrasiveness and scratching qualities in nine of the competitive tooth pastes referred to in respondent's advertising disclosed through a lens magnification of ten diameters no apparent abrasiveness or scratching.

For the abrasion test the professor employed by respondent ground flat the surface of the crown of an extracted tooth and brushed under pressure of 400 grams or about nine-tenths of a pound with between 50,000 and 150,000 strokes. Using the ten typical tooth pastes he found that all of the ten pastes were somewhat abrasive but showed a marked difference in degree. It was estimated without contradiction that such a brushing was the approximate equivalent, in pressure and number of strokes, of ten years' twice-a-day brushing by the ordinary user.

From a consideration of the entire evidence upon this point it must be concluded that it is largely a matter of interpretation as to whether the scratches disclosed by a magnifying glass in the tests are harmful to the enamel. Dentists who had carefully examined

the photographs of the result of the tests upon which respondent's claims were based and who were unquestionably disinterested did not consider that the other efficiently cleaning tooth pastes sold by competitors showed injury to enamel but one of these conceded on cross examination that every scratch is an injury to enamel. These and most other dentists appearing as witnesses had used one or another of the competitive brands on his own teeth. The scientist employed to make these tests reported to respondent in November, 1930, that he himself did not consider a dentifrice harmful just because it scratched the teeth, but he did believe that scratches and other evidences of abrasion constituted an injury and cautioned respondent not to represent this injury as of serious consequence as it could not be concluded even from the strenuous abrasion test that even the more abrasive dentifrices are definitely harmful, the actual amount of enamel removed being small in every case.

PAR. 5. The Commission finds that there was no basis whatever in these tests for respondent's claim relative to remarkable double polishing with two dental polishers and that as a matter of fact such claim gave the misleading impression that it was safer to use Dr. West's tooth paste than competitive tooth pastes merely because the former contained two polishing agents. The paste contained a very harsh abrasive, celemite or silicon dioxide, toned down or diluted to the degree of abrasiveness respondent desired by the admixture of high-grade chalk which is a much milder abrasive. The tooth paste is slightly abrasive.

PAR. 6. Respondent was charged in the complaint with falsely representing a certain photograph of tooth enamel to have been taken after ten years' brushing with Dr. West's whereas the ten years' brushing consisted of exposing an extracted tooth to brushing by a machine for about eight hours. The Commission finds the fact to be that, in all except one of its advertisements produced in evidence, the representations made by respondent upon this point were that the photographs showed the enamel after the equivalent of ten years' brushing. The Commission finds that this was a true representation.

PAR. 7. It was further charged in paragraph 3 of the complaint that in using the trade name, Dr. West's, respondent was deceiving the public into believing that the tooth paste originated and was the product of the scientific initiative and skill of an individual physician. The answer shows that Dr. George N. West, a practicing dentist, who, in 1920, endorsed and gave his name to respondent's tooth brush products, has ever since been associated with respondent

in a consulting capacity as to composition of the tooth paste. The facts adduced by the evidence fully support respondent's answer in that respect.

PAR. 8. Complaint issued herein on February 8, 1932. On June 30, 1931, respondent had formal notice that the Commission was investigating its aforesaid methods of competition. The evidence shows that the last reference to university by respondent on the face of its magazine advertisements was the November 21, 1931, issue of the Saturday Evening Post. However, up until the end of January, 1932, in response to coupons printed in such magazine advertisements, respondent did send out advertising matter containing reference to the great university laboratory tests and photographs as heretofore set out. February 28, 1931, was the last date upon which the actual number of competitive tooth pastes were referred to with the exception of the reference to them in the advertising matter sent out in response to coupons. The window display cards containing the false and misleading representations were abandoned by November 15, 1931. Respondent's whole advertising policy from time to time has been amended and corrected. While it was stated in both the answer and the evidence that respondent had no intention of resuming any reference to the so-called university tests or photographs or to the comparative results of such tests to the disparagement of its competitors, its advertising managers could not state what its future advertising policy would be. The change in its advertising policies insofar as it affected competitors was due, in part at least, to the action of this Commission which, therefore, is not assured that in the absence of some restraint the practices complained of would not be resumed.

PAR. 9. Respondent's use of the foregoing false and misleading advertising has a capacity and tendency to deceive and does deceive retailers and ultimate purchasers throughout the various States of the United States into the belief that tests and photographs authorized, made, checked, or adopted by a university have demonstrated that Dr. West's tooth paste is the only one of a number of competitive tooth pastes that can be safely used without injury to the teeth and that it is safer to use Dr. West's tooth paste than competitive tooth pastes merely by reason of the fact that Dr. West's contains two polishing agents, when such are not the facts. The Commission finds that such methods of advertising on the part of respondent have had, and if resumed, again would have a distinct tendency to divert trade from competitors to the 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 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 come on for final hearing by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony taken, and briefs of counsel for both the Commission and the respondent; 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 respondent, Western Bottle Manufacturing Co., a corporation, its agents, representatives, servants, and employees, in connection with the sale and distribution in interstate commerce of a tooth paste under the trade name of Dr. West's Tooth Paste cease and desist from representing to customers or prospective customers, either directly or by implication:

1. That certain tests purporting to show the comparative cleansing, scratching and erosive properties of its own and nine unnamed tooth pastes, to the disparagement of the latter, are tests which have been authorized, made, checked or adopted by a university unless and until such time as some university, as an institution, shall have so authorized, made, checked, or adopted such tests;

2. That certain pictures of teeth purporting to show the comparative results of such tests are the work of a university unless and until such time as some university, as an institution, shall have authorized, approved, or adopted such comparative photographic results;

3. That Dr. West's tooth paste is the only one of any number of competitive tooth pastes that can be used safely or without injury to the teeth;

4. That it is safer to use Dr. West's tooth paste than competitive tooth pastes merely by reason of the fact that Dr. West's contains two polishing agents.

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*It is further ordered,* That the complaint be, and it hereby is dismissed as to so much of paragraphs 2 and 3 thereof as charge respondent with an unfair method of competition in representing that a certain magnified photo of tooth enamel, after ten year's brushing with Dr. West's, showed no scratching or injury to the enamel, and in the use by respondent of the trade name, Dr. West's.

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

## Complaint

## IN THE MATTER OF

## H. &amp; S. PUBLISHING 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 2070. Complaint, Oct. 21, 1932—Decision, Dec. 12, 1932*

Where a corporation engaged in publication and sale of a monthly magazine, made such representations in connection with sale of a certain variety of soybeans sold in conjunction with subscriptions to its said publication, as "*Coffee 1 cent per pound—Grow your own coffee and cut down the high cost of living. The domestic coffee berry makes a delicious, nourishing drink, \* \* \* send 25 cents and 10 cents extra \* \* \* and we will send you our publication for one year and one packet of seed \* \* \** You can raise all the coffee you want and sell the balance to your neighbors \* \* \*", facts being seed in question was not that of a coffee berry; with tendency to mislead and deceive prospects into believing that through subscribing they could buy, grow, and produce coffee at a cost of 1 cent per pound, and with result of bringing about their subscriptions, and purchases of said seed in reliance upon truth of such misleading and false representations, and a tendency to divert trade from and otherwise injure its competitors:

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

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Stephen A. Day*, 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, an Illinois corporation engaged in publishing, soliciting, and obtaining annual subscriptions for, and circulating a monthly periodical, and also in the sale, in conjunction with subscriptions, of packets of seed advertised and sold by it as the seed of "coffee" or "domestic coffee berry", and with principal place of business in Chicago, with advertising falsely or misleadingly as to 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 aforesaid, in its advertisements of said seed, represents the same as "Coffee 1 cent per pound" and invites the prospect to "Grow your own coffee and cut down the high cost of living",<sup>1</sup> etc., thereby representing to prospective sub-

<sup>1</sup>The advertisement alleged in the complaint is set forth in the findings infra at page 167.

scribers that it will sell them "one or more packets of coffee seeds from which coffee can be grown and produced at a cost of 1 cent per pound, when in truth and in fact, the seed so offered for sale and sold is not the seed of a coffee berry but is a variety of soybean seed and when planted and grown will not produce coffee."

"The foregoing false and misleading representation", as alleged, "is calculated and has a tendency to mislead and deceive prospective subscribers into the erroneous belief that by subscribing to respondent's magazine, they can buy, grow, and produce coffee at a cost of 1 cent per pound, and relying upon the truth of such representation and actuated by such erroneous belief said prospective subscribers have purchased of the respondent, annual subscriptions to the aforesaid publication, and have bought such bean seed from respondent. Such misleading and false representation is likewise calculated and has a tendency to divert trade from and otherwise injure the competitors of respondent"; 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 H. & S. Publishing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent after having stated by letter of October 28, 1932, that it was desirous of expediting this said proceeding and avoiding the expense incident to the taking of testimony, stipulated and agreed as to the facts involved, and further stipulated and agreed that the Commission might thereupon proceed to make its report, state its findings as to the facts (including all reasonable inferences which it might draw from the said stipulated 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, respondent's statement of October 28, 1932, in lieu of answer and the agreed statement of facts, 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. The respondent, H. & S. Publishing Co., a corporation, organized and existing under the laws of the State of Illinois, with principal place of business in the city of Chicago, State of Illinois, for more than two years last past, has been engaged in publishing, soliciting and obtaining annual subscriptions for, and circulating a monthly magazine entitled "Everyday Life". This publication, when subscribed to by the public, was by respondent sold and distributed by mail from its principal place of business as aforesaid into and through various other States of the United States to the subscribers. Respondent also has been engaged in selling a certain variety of soybean seed in conjunction with its aforesaid publication. A small number of these seeds were placed in small packets and when sold, likewise were distributed from its principal place of business as aforesaid into and through various other States of the United States to the purchasers thereof. These seeds were advertised and sold by respondent as the seed of "coffee" or "domestic coffee berry".

PAR. 2. In the course and conduct of its business as aforesaid respondent has been in competition with others who are and have been engaged in the sale and distribution in interstate commerce of magazines of a like or similar character, and with others who are and have been engaged in the sale and distribution in interstate commerce of coffee or coffee substitutes or soybeans or seed for growing the same.

PAR. 3. In the course and conduct of its business as aforesaid respondent caused to be published in other magazines and periodicals advertisements of its monthly magazine "Everyday Life" and in such advertisements it solicited annual subscriptions as aforesaid in words and figures following:

## COFFEE 1 CENT PER POUND

Grow your own coffee and cut down the high cost of living. The Domestic Coffee Berry makes a Delicious, Nourishing Drink, to take the place of injurious coffee. It is a pure food drink that gives health and strength to young and old. The best coffee substitute ever discovered, and thousands pronounce it as good or better than the best coffee. It has the rich deep brown color of old Java. One of the hardiest, easiest grown and most productive of all plants. Can be successfully grown in any climate, and is sure to ripen even in the extreme north. As easily grown as corn or beans, and does well on all soils. Thousands suffer untold injuries from store coffee. Better grow the new kind and save your health and money. To introduce our monthly publication Everyday Life, send 25 cents and 10 cents extra (35 cents in all) and we will send you our publication for one year and one packet of

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seed. Send 60 cents and we will send the paper and three packets of seed. 12 packets of seed and the paper one year for \$1. You can raise all the coffee you want and sell the balance to your neighbors. Don't wait—Send now as supply of seed is limited. *Everyday Life*, 337 W. Madison Street, Dept. 20-d, Chicago, Ill.

Thereby, respondent impliedly represented to the prospective subscribers that it would sell such subscriber one or more packets of coffee seeds from which coffee could be grown and produced at a cost of 1 cent per pound, when in truth and in fact, the seed so offered for sale and sold was not the seed of a coffee berry but a variety of soybean seed and when planted and grown would not produce coffee.

PAR. 4. The foregoing false and misleading representation has a tendency to mislead and deceive prospective subscribers into the erroneous belief that by subscribing to respondent's magazine, they can buy, grow, and produce coffee at a cost of 1 cent per pound, and relying upon the truth of such representation and actuated by such erroneous belief said prospective subscribers have purchased of the respondent, annual subscriptions to the aforesaid publication, and have bought such bean seed from respondent. Such misleading and false representation likewise has a tendency to divert trade from and otherwise injure the competitors of respondent.

PAR. 5. The above acts and practices of respondent were all to the prejudice of the public and respondent's competitors, and constituted 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.

PAR. 6. Respondent has abandoned the unfair methods above set out.

## CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings have been to the prejudice of the public and of respondent's competitors and were unfair methods of competition in commerce and constituted 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, statement of respond-

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ent filed October 28, 1932, in lieu of formal answer and agreed statement of facts 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 respondent, H. & S. Publishing Co., a corporation, its agents, servants, and employees in soliciting the sale of and selling and advertising of a periodical or publication known as "Everyday Life" or seed in interstate commerce cease and desist from representing directly or by implication that any seed of the soybean variety is the seed of coffee or is the "domestic coffee berry" or that coffee can be raised therefrom, and that by means of the planting thereof coffee can be produced or grown for 1 cent or any other price per pound.

*It is further ordered,* That the said respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission its 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.

IN THE MATTER OF  
T. H. BANFIELD, AN INDIVIDUAL, DOING BUSINESS  
UNDER THE TRADE NAME AND STYLE OF PACIFIC  
EXTENSION UNIVERSITY

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

*Docket 2051. Complaint, June 7, 1932—Decision, Dec. 19, 1932*

Where an individual engaged in sale of correspondence courses in secretarial duties and business, together with second-hand and rebuilt typewriters, to students in various States, through so-called "registrars" or agents,

- (a) Included the word "university" in the trade name employed by him, and in his representations to students and prospective students referred to himself and his organization as a "university", notwithstanding fact he did not teach the arts and sciences taught in universities, did not have a staff consisting of learned instructors in the various higher branches of learning, and was not authorized to confer degrees of higher learning, and his business and organization did not constitute a university;
- (b) Referred to supposed role of a purported "Students' Foundation" as a cooperating agency assisting pupils, in acknowledging receipt and acceptance of contracts from enrolling students, and set forth assignment of particular student's account thereto, and employed such name thereafter in dunning delinquents, facts being business involved was not an investment for benevolent purposes, or a donation, legacy, or fund for the support of such institutions as schools or hospitals, or of some specific object in connection therewith, but was a purely commercial enterprise for profit, and had no endowment or foundation connected therewith, and purported foundation was fictitious; and
- (c) Represented through agents and impliedly in contracts that regular prices varied from \$251.50 to \$295 depending upon deferred-payment arrangements, and that he was offering to waive the \$120 charge incorporated in said amounts for tuition as distinguished from price of typewriter and other materials, facts being balance thus left and charged constituted the regular price ordinarily received by him for the course, typewriter, and materials, was not special or reduced, and involved no free tuition;

With capacity to mislead prospective students and to induce them to enroll and pay for the course as and for that of a true university and believing in the truth of aforesaid representations, and thereby divert to himself patronage from competitors:

*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. Eugene W. Burr* for the Commission.

*Phillips & Munck*, of Oakland, Calif., 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 Berkeley, Calif., as Pacific Extension University, in the sale of correspondence courses in secretarial duties and business, to students in the various States, together with sale of second-hand and rebuilt typewriters (of which one is supplied to each student), with using misleading trade name and misrepresenting business status, enforcing payment of delinquent accounts through fictitious agencies, and misrepresenting prices and terms, 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 aforesaid and soliciting business through agents by him designated as "registrars", makes use of his aforesaid trade name including the words "Extension University", and represents to prospective students and to students through his solicitors, that his business is a university,<sup>1</sup> notwithstanding the fact that "respondent is not, and does not operate or conduct a university within said popular conception of the word, he does not undertake to teach the arts and sciences usually taught in colleges or universities, or any of them, nor does he teach or undertake or pretend to teach any art, science, or branch of learning other than the subjects \* \* \* described."

Respondent further, as charged, makes use of a supposed "Students' Foundation" to dun students who have become delinquent in their payments, it being respondent's practice to advise the new student, over the signature of such foundation, that his account has been assigned thereto and that all payments should be made to it, and also to write such student, at the same time, over its own aforesaid trade name, that in order for the "foundation" which operates entirely from capital received from students, to continue to help students, each student must send in his payments regularly,<sup>2</sup> notwithstanding fact that the foundation is purely fictitious, and respondent's business in all aspects is purely commercial and conducted for profit, there being no endowment or foundation connected therewith or with any phase of the business.<sup>3</sup>

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<sup>1</sup> As alleged in the complaint, "a university, as commonly understood, is an educational institution of higher learning empowered to confer degrees, with a faculty of learned persons acting as instructors in the various higher branches of learning embraced in the curriculum, which curriculum usually includes the liberal arts and sciences."

<sup>2</sup> The letter referred to is set forth in the findings infra.

<sup>3</sup> As alleged in the complaint, "the word 'Foundation' as commonly understood means a fund invested for benevolent or charitable purposes, or a donation, legacy or fund for the support of such institutions as schools or hospitals, or the support of some specific object in connection with such institutions."

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Respondent further, as charged, through his agents and by implication in his various forms of contracts, represents that the regular price for a course varies from \$251.50 to \$295 (of which \$120 is for tuition, and balance for typewriter and other material), depending upon deferred-payment arrangements, but that he is offering to waive tuition and accept enrollment for price of typewriter and other material, facts being price thus charged constitutes his regular and full price for course, typewriter and material, is not special or reduced, and involves no free tuition.

Each and all of said representations, as alleged, "are false and misleading and have the tendency and capacity to deceive prospective students and to induce them to enroll and pay for respondent's courses in and on account of a belief that said representations are true, and so to divert to respondent patronage from his competitors", and said "acts and practices of the respondent are all to the prejudice of the public and of 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, T. H. Banfield, an individual, doing business under the trade name and style of "Pacific Extension University", 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 stipulation as to certain of the facts by which it was agreed that, as to the said facts so stipulated, said stipulation might be taken in lieu of testimony, and witnesses having been heard in documentary evidence received as to the facts not so stipulated, by a trial examiner thereunto duly appointed by the Commission, and said trial examiner having made and rendered report thereon, and respondent having waived the presentation of written and oral argument in opposition to an order to cease and desist herein, this proceeding has been brought on for final determination. Now, therefore, the Commission, having considered the record in this proceeding 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 T. H. Banfield is now and has been for over a year last past engaged at Berkeley, Calif., under the trade

name of "Pacific Extension University", in the business of selling, by correspondence, courses of instruction consisting of mimeographed, printed, and written lessons in secretarial duties and business to students being and residing at their places of residence in the various States of the United States, the number of such students exceeding 2,000. Respondent's business also embraces the selling of second-hand and rebuilt typewriters, such a typewriter being furnished to each student. When students are enrolled by contracts satisfactory to respondent as to the payment of the price of the course of instruction and typewriter, the lessons comprising said course of instruction, and said typewriter, are transported in interstate commerce by respondent, by means of express or mail, from respondent's place of business at Berkeley, Calif., or, in case of the typewriter, from some other place in the United States, to the several students at their various places of residence.

PAR. 2. In all of his said business respondent is in competition with other persons who are likewise engaged in the sale of kindred courses of instruction in interstate commerce and also in competition with other persons who sell typewriters and ship same throughout the United States in interstate commerce.

PAR. 3. The respondent solicits his business through agents designated by him as "registrars", who personally call upon young men and women throughout the United States and procure many of them to enroll as students and to purchase, receive, and agree to pay for, the courses of instruction and typewriter. Respondent uses his trade name and style aforesaid, including the word "university", and moreover in his representations to students and prospective students refers to himself and his organization as a "university". The word "university", as understood by the public, is an educational institution of higher learning empowered to confer degrees, with a faculty of learned persons acting as instructors in the various higher branches of learning embraced in the curriculum, which curriculum includes the liberal arts and sciences, and one or more special branches of learning, such as theology, law and medicine. Respondent's courses are limited to those referred to in paragraph 1 hereof. He does not teach the arts and sciences taught in universities. His staff does not consist of learned persons and he is not authorized to confer degrees of higher learning upon any persons. Respondent and his organization do not constitute a university.

PAR. 4. The respondent, upon the receipt of a contract of enrollment signed by the student and upon the acceptance of such contract, sends to such student a letter purporting to be signed by "The Students' Foundation" in which the student is advised that his ac-

count has been assigned to The Students' Foundation, and that all payments should be made to said foundation. The student is at the same time advised by another letter signed "Pacific Extension University", reading as follows:

DEAR STUDENT: The Students' Foundation is operating entirely upon capital received from students of the Pacific Extension University.

They are willing and anxious to help students all the way through our course of training. However, in order to make it possible for them to continue to do this it is necessary for each student to send in regular payments to maintain the operating fund.

Thanking you for your cooperation in this matter, and trusting that you will not allow your account to get in arrears, we are

Very sincerely,

PACIFIC EXTENSION UNIVERSITY.

Thereafter in cases of delinquency in payments, the students are dunned by means of letters purported to have been signed by The Students' Foundation. The word "foundation" as commonly understood means a fund invested for benevolent or charitable purposes, or a donation, legacy or fund for the support of such institutions as schools or hospitals, or the support of some specific object in connection with such institutions. Whereas the respondent's business in all of its aspects is purely commercial and conducted for profit and there is no endowment or foundation in connection with the business, or any phase of the business, and the purported "Students' Foundation" is a fiction.

PAR. 5. The respondent, through his agents and by implication in his various forms of contracts presented prospective students, represents that the regular prices of a course of instruction varying in amount by reason of terms of the contract as to cash and deferred payments is from \$251.50 to \$295, and that of said amount \$120 is for tuition and the balance for the typewriter and other material. He represents that he is offering to the prospective student to make no charge for tuition and to accept the student's enrollment on payment of the alleged price of the typewriter and other material. Whereas said sum stated to be for material is the regular, permanent and full price ordinarily received by the respondent for the course of instructions including typewriter and material, and is not a special or reduced price, nor is there any free tuition involved in the transaction.

PAR. 6. The use of the word "university" as part of respondent's trade name and style is misleading and deceptive to the public and the representations, found to have been made in paragraphs 3, 4, and 5 hereinabove, are untrue and misleading and have the capacity



to mislead prospective students and to induce them to enroll and pay for respondent's course in and on account of a belief that said use of said word "university" is justified by the character of respondent's institution and that said representations are true and so to divert to respondent patronage from his competitors.

#### CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings 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".

#### ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission on the complaint, the answer of respondent, a stipulation entered into between the respondent and counsel for the Commission as to certain issues of fact, the oral and documentary evidence received as to the issues of fact not so stipulated, and the report of the trial examiner, and the Commission having approved said stipulation and 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, T. H. Banfield, his agents, representatives, and employees, in offering for sale or selling courses of instruction or equipment in interstate commerce, shall cease and desist from:

(1) Using the word "university" in the trade name of respondent, or in any manner, directly or indirectly, using said word as descriptive of respondent's business;

(2) Representing, directly or indirectly, that students' foundation cooperates with respondent's school or assists respondent's pupils so long as such is not the fact; and

(3) Representing, directly or indirectly, that the price at which respondent offers any course of instruction or any equipment or any combination of instruction and equipment, is a special or reduced

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price or a price that is lower than the respondent's ordinary or usual price therefor, when such is not the fact.

*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.

## Complaint

IN THE MATTER OF  
ANNA M. GIBBIN

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2064. Complaint, Sept. 28, 1932—Decision, Dec. 20, 1932*

Where an individual engaged in sale and transportation of plants, flowers and bulbs to purchasers pursuant to mail order, chiefly; in advertising said plants, etc., in pamphlets and newspapers,

- (a) Falsely represented same as of superior quality and variety, and of a large variety, and that bulbs would produce flowers of such a variety, facts being said plants, etc., were in many cases inferior in said respects, bulbs would not produce as represented, and shipments to customers frequently did not supply variety advertised and ordered and were often short of amounts requested and paid for;
- (b) Represented that she imported and offered Holland bulbs and operated a large floral establishment, growing most of her stock, supplying many notable florists with cut flowers, and offering her surplus to flower lovers, facts being she raised only a few of the flowers, etc., dealt in, and representations made by her as aforesaid in other respects were false;
- (c) Guaranteed that unsatisfactory goods might be returned and others would be given in place thereof or money refunded, and that orders would be filled promptly, facts being she frequently failed or refused to replace purchases brought to her attention as unsatisfactory or to return amount paid therefor, and made it her practice not to refill orders or make refunds upon complaint unless threatened with suit, and frequently received money in payment for orders without filling same at all (or until threatened with suit), or returning the money; and
- (d) Falsely represented that she offered her plants, flowers and bulbs at prices greatly reduced from those usually charged by her, facts being prices charged were sometimes those usually demanded by her and sometimes in excess thereof;

With tendency and capacity to deceive the purchasing public into believing said statements and representations to be true and induce purchasers to buy said plants, etc., in such belief and unfairly divert trade to her from competitors and otherwise injure the same:

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

*Mr. E. J. Hornbrook* 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, engaged as Wren's Nest in the town of Pemberton, N.J., in the sale of flowers and bulbs to purchasers pursuant to orders

usually received through the mail, with advertising falsely or misleadingly as to nature, quality, and source of products, business status, guarantees, shipments and prices; in that respondent falsely represents (a) quality and variety of her plants, flowers and bulbs, and variety produced thereby; and (b) her operations as a large floral establishment, (c) supplying many notable florists with cut flowers, and (d) herself as an importer of and dealer in Holland bulbs; also (e) her guarantees of satisfaction or money back, (f) prompt filling of orders, and (g) sale of flowers and bulbs at greatly reduced prices<sup>1</sup>; with tendency and capacity to deceive purchasing public into believing such representations to be true, and induce purchase of her aforesaid products in such belief, and thus unfairly divert trade from and otherwise injure her competitors; all to their prejudice and that of the public.

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 the 28th day of September, 1932, issued complaint against the above named respondent and caused the same to be served on the 29th day of September, 1932, 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 respondent was notified and required, within thirty days from the date of service of 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 answer and failure to answer, said provisions being set forth in said notice and providing in part as follows:

Failure of 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 said complaint herein, or at any time, made or filed answer to said complaint.

<sup>1</sup> The allegations of the complaint in the foregoing respects are set forth verbatim or substantially so in the findings *infra*.

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, Anna M. Gibbin, is an individual trading under the name of Wren's Nest in the town of Pemberton, State of New Jersey. She is now and for more than three years last past has been engaged, under said trade name, in the business of selling and transporting plants, flowers, and bulbs at and from said town of Pemberton. Orders of purchasers of such plants, flowers or bulbs are usually received by respondent through the mails and when such orders are received such plants, flowers or bulbs are packed at said town of Pemberton and shipped by mail to such purchasers, many of whom reside outside the State of New Jersey.

PAR. 2. In the course and conduct of said business respondent is in competition with individuals, copartnerships, and corporations likewise engaged in the sale and transportation of plants, flowers and bulbs between and among various States of the United States.

PAR. 3. In the aid of the sale of said plants, flowers and bulbs respondent advertises in pamphlets, sent through the mails, and in newspapers having interstate circulation, some of which newspapers are printed and published outside the State of New Jersey, and it is through such media that respondent makes contact with her customers who, generally, are people desiring such plants, flowers or bulbs for the purpose of beautifying their own gardens and homes. In advertising, as aforesaid, respondent makes the following, among other false and misleading statements and representations:

That her plants, flowers and bulbs are—

- (a) Of superior quality and variety;
- (b) Are of a large variety and the bulbs will produce flowers of a large variety;
- (c) Respondent supplies many notable florists with cut flowers and offers her surplus of bulbs and plants to flower lovers;
- (d) She imports Holland bulbs and offers them for sale;
- (e) She operates a large floral establishment, growing most of the stock sold by her;

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(f) Guarantees that if goods are not satisfactory they may be returned and other goods will be given in place of same or money refunded;

(g) Orders will be promptly filled;

(h) Offere said plants, flowers and bulbs at greatly reduced prices from the usual price.

PAR. 4. The statements and representations set forth in the preceding paragraphs are false and misleading in that:

(a) The plants, flowers, and bulbs sold by respondent are not of a superior quality or variety and many of them are inferior as to quality and variety;

(b) The plants and flowers so sold are not of the large variety and bulbs so sold will not produce flowers of a large variety and often the variety shipped to a customer is not the variety of the plant or flower or bulb advertised in its said pamphlets and said newspapers and ordered by said purchasers; and in many instances the shipment is short of the amount ordered and paid for by said purchasers;

(c) Respondent supplies no flowers to leading or other florists and respondent raises only a few flowers, plants, and bulbs and purchases the major portion of such flowers, plants, and bulbs, so shipped to such purchasers, in the open market;

(d) Respondent does not now and has not for many years imported bulbs from Holland or any other country for the purpose of sale to her said customers nor has she shipped imported bulbs to them;

(e) Respondent does not operate a large floral establishment but raises only a few gladiolas and dahlias;

(f) In many instances respondent, although notified by said purchasers that said flowers, plants, or bulbs were unsatisfactory, failed or refused to replace the same or to refund the purchase price thereof. It is the practice of respondent not to refill said orders and not to refund the purchase price thereof upon complaint of the purchaser unless threatened with suit;

(g) In many instances the money in payment of orders for said plants, flowers and bulbs is received by respondent and the orders are not filled and the money not returned and in other instances the orders are not filled until suit is threatened;

(h) Respondent does not offer or sell said plants, flowers or bulbs at a greatly reduced price from the usual price and the price asked by her is sometimes the usual and sometimes in excess of the usual price thereof.

## Order

PAR. 5. The aforesaid use by the respondent of the statements and representations described in paragraph 3 hereof has and has had the tendency and capacity to deceive the purchasing public into the belief that such statements and representations are true and to induce purchasers to buy such plants, flowers, and bulbs in such belief and to unfairly divert trade from respondent's competitors to the respondent and otherwise injure them.

## CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing are to the prejudice and injury of the public and to said 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 28th day of September, 1932, issued its complaint against Anna M. Gibbin, respondent herein, and caused the same to be served upon the said respondent on the 29th day of September, 1932, 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 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 hearings on the charges set forth in the complaint, of all of 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, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is ordered,* That the respondent, Anna M. Gibbin, her 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 sale or offering for sale of plants, flowers, or bulbs in interstate commerce, or within the District of Columbia as follows:

PARAGRAPH 1. Advertising or representing—

(a) Said plants, flowers, and bulbs as of superior quality or variety when such is not the fact;

(b) that such bulbs will produce flowers of a large variety, when such is not the fact;

(c) that respondent supplies many notable florists with cut flowers and offers her surplus bulbs and plants to flower lovers when such is not the fact;

(d) that she imports bulbs from Holland or any other foreign country and offers same for sale when such is not the fact;

(e) that she operates a large floral establishment in which she grows most of the stock of plants, flowers and bulbs so sold when such is not the fact;

(f) guaranteeing that if such goods are not satisfactory they may be returned and other satisfactory goods will be supplied in place of the same or money refunded without fulfilling such guarantee;

(g) that orders will be promptly filled unless they are filled promptly;

(h) that said plants, flowers and bulbs are offered at greatly reduced prices from the usual price when such is not the fact.

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.



## Complaint

IN THE MATTER OF  
TIFFANY LABORATORIESCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2001. Complaint, Jan. 25, 1932—Order, Jan. 18, 1933*

Consent order requiring respondent corporation, its officers, etc., in connection with the sale, offer, or advertisement in interstate commerce, of its massage cream or so-called tissue builder, to cease and desist from—

- (a) Representing, advertising, or stating that (1) tissue can be built by application of said cream, (2) sunken cheeks, thin necks, etc., can be abolished or any part of the body be developed, by use of said cream, without exercise, (3) it contains tissue building oils and will remove wrinkles; (4) said qualities are established by certain formulae and tests, and (5) it is compounded in a laboratory owned or controlled by the corporation, which (6) has or had a person named Jean H. Tiffany connected therewith; and from—
- (b) Using as a part of its corporate name, or as a trade name, the word "Laboratories", in connection with sale of said cream as aforesaid, unless and until it actually "maintains and operates an establishment where scientific investigations are conducted."

*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 Tiffany Laboratories, 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, Tiffany Laboratories, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Cleveland in said State of Ohio. Respondent is now and has been for more than four years last past engaged in the business of selling cosmetics, among which cosmetics is a massage cream designated and named by respondent as "Tiffany Tissue Builder." Respondent's sales are and have been since its organization direct to the purchasing public as the result of mail orders obtained by respondent from the purchasing public. Respondent has caused and still causes said massage cream, when so

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sold by it, to be transported from its place of business in the city of Cleveland, State of Ohio, to purchasers thereof located in the State of Ohio and in other States of the United States. In the course and conduct of its said business respondent is in competition with other corporations and with individuals and partnerships engaged in the sale of massage creams and other cosmetics between and among various States of the United States.

PAR. 2. Respondent, in soliciting the sale of and in selling between and among the various States of the United States its product named "Tiffany Tissue Builder", has caused and still causes advertisements of such product and its method of selling the same to be inserted in various magazines, newspapers and periodicals having general circulation between and among the various States of the United States, including among others the following:

"Smart Set", issue of September, 1929, and has further published and circulated, or caused to be published and circulated, in aid of the sale thereof, letters, circulars, booklets and other literature regarding its said product, and its method of selling the same. Respondent procures orders by mail and otherwise through the means above set forth and fills said orders by causing its said product, so ordered, to be shipped from its place of business to the purchasers thereof in the State of Ohio and in various other States of the United States.

Respondent, in the aforesaid advertisements and other printed matter, causes and has caused to be set forth the following statements:

You, too can abolish forever sunken cheeks, thin necks, hollow shoulders flat busts.

No dieting or tiresome exercise is necessary.

Simply apply Tiffany Tissue Builder externally to develop more flesh where you want it.

Results guaranteed or your money promptly refunded if you are not delighted after four weeks' use.

Tiffany Laboratories, Inc.

I am sure you will find it very excellent for filling out a thin face or neck, removing wrinkles and as a general builder of skin tissues.

Tiffany Tissue Builder is a compounded preparation of the most valuable tissue building oils known to science.

Three hundred and sixteen different formulae were made and tested among women. The results of this particular formula were amazing.

Sunken cheeks quickly rounded out with healthy beauty.

And it proved equally effective for beautifying too thin necks, filled out hollow temples, removing wrinkles and crow's feet and developing the bust.

It is made in our laboratories.

Tiffany Tissue Builder positively will round out sunken cheeks, will make thin and emaciated necks lovely and graceful, will fill out hollow temples.

It will remove crow's feet and develop busts to proper and pleasing maturity.  
It will do all this for you and more.

It will make you look and feel healthy, vigorous, and exuberant.

Ours is a guaranteed Tissue Builder.

Abolish ugly hollows.

Jean H. Tiffany, president.

PAR. 3. In truth and in fact the statements made by the respondent in its advertising, as set forth in paragraph 2 hereof, are wholly incorrect in certain respects and greatly exaggerated and misleading in others in that:

(a) Tissue cannot be built by the mere application of said massage cream;

(b) Sunken cheeks, thin necks, hollow shoulders and flat busts cannot be abolished by the use of said massage cream;

(c) Any part of the body cannot be developed by the use of said massage cream without exercise;

(d) Said massage cream does not contain any tissue building oils;

(e) The mere application of said massage cream will not remove wrinkles;

(f) No formulae have been made or treated for the respondent as a result of which respondent's said massage cream was found to have the powers so claimed for it by the respondent;

(g) Said massage cream is not compounded by respondent, nor is it compounded in a laboratory owned or controlled by respondent;

(h) Respondent does not own or operate a laboratory;

(i) No person by the name of Jean H. Tiffany is or has ever been connected with respondent's business, the name Jean H. Tiffany as used by the respondent in the manner described in paragraph 2 hereof being that of a fictitious person.

PAR. 4. There are among the competitors of respondent, described in paragraph 1 hereof, manufacturers of massage creams; there are among such competitors manufacturing corporations whose corporate names indicate that they manufacture the products which they sell; there are also among such competitors, persons, firms, and corporations who do not make such representations as those made by the respondent, as set out in paragraph 2 hereof.

PAR. 5. The aforesaid representations of the respondent and the use by the respondent of its said corporate name, all as hereinbefore set forth, have the capacity and tendency to mislead the purchasing public and to induce the purchasing public to purchase said Tiffany Tissue Builder in the following beliefs, viz, (a) that respondent

manufactures said Tiffany Tissue Builder; (b) that in purchasing said Tiffany Tissue Builder from respondent, the purchasing public saves the profits usual to wholesalers and retailers of massage creams and other cosmetics; (c) that said Tiffany Tissue Builder has the properties set out in paragraph 2 hereof; (d) and further that said name Jean H. Tiffany is that of the president of respondent. The aforesaid representations have and have had the capacity and tendency to divert trade to respondent from competitors and by such representations substantial competition throughout the various States of the United States and the District of Columbia is injured by respondent to a substantial extent.

PAR. 6. 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 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer, that it be permitted to waive hearing on the charges set forth in the said complaint and not to contest the said proceeding; and the respondent having consented that this Commission might make, enter and serve upon said respondent, as provided in paragraph 2 of Rule III of the Commission's Rules of Practice, an order to cease and desist from the methods of competition described in said complaint; and the Commission being fully advised in the premises,

*It is hereby ordered,* That the aforesaid motion be and the same is hereby granted; and it is hereby further ordered that the respondent, Tiffany Laboratories, a corporation, its officers, agents, employees, and representatives in the sale, offering for sale, or advertising for sale in interstate commerce of its massage cream called by it Tiffany Tissue Builder forthwith cease and desist from representing, advertising, or stating that:

(a) Tissue can be built by the application of said massage cream;

(b) Sunken cheeks, thin necks, hollow shoulders and flat busts can be abolished by the use of said massage cream;

(c) Any part of the body can be developed by the use of said massage cream, without exercise;

## Order

- (d) Said massage cream contains tissue building oils;
- (e) The application of said massage cream will remove wrinkles;
- (f) Formulae have been made or tested for the respondent as a result of which, said massage cream was found to contain tissue-building oils and as a further result of which, said massage cream was found to have the power of building tissue, abolishing sunken cheeks, thin necks, hollow shoulders and flat busts, of developing any part of the body and of removing wrinkles;
- (g) Said massage cream is compounded by respondent or compounded in a laboratory owned or controlled by respondent;
- (h) Respondent owns or operates a laboratory;
- (i) A person by the name of Jean H. Tiffany is or ever has been connected with respondent's business.

*And it is hereby further ordered,* That the respondent Tiffany Laboratories, its officers, agents, employees, and representatives in the sale, offering for sale, or advertising for sale in interstate commerce of its said cream called by it Tiffany Tissue Builder forthwith cease and desist from using as a part of its corporate name or as a trade name the word "Laboratories" unless and until it actually maintains and operates an establishment where scientific investigations are conducted.

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

Complaint

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IN THE MATTER OF  
GEORGE H. LEE COMPANY

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

*Docket 2081. Complaint, Dec. 7, 1932—Order, Jan. 20, 1933*

Consent order requiring respondent, its agents, etc., in connection with sale in interstate commerce of its so-called "Germozone" and "Gizzard Capsules", to cease and desist representing that use of former product alone constitutes a proper and sufficient treatment or remedial or preventive measure for certain specific ailments specified, and use of latter alone will serve to rid fowls of certain worms.

*Mr. PGad B. Morehouse* 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 George H. Lee Co., a corporation, has been and is now using unfair methods of competition in interstate commerce, in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, George H. Lee Co., is a corporation organized and existing under the laws of the State of Nebraska, having its principal place of business at 12th and Harney Streets in the city of Omaha, State of Nebraska, and for more than two years last past has been engaged in the compounding, sale, and distribution of certain alleged remedies for diseases and worms in poultry, particularly two products known and sold under the names "Germozone" and "Gizzard Capsules", causing said products when sold to be shipped from its place of business at Omaha, Nebr., into and through various other States of the United States to retail hardware, drug stores (both wholesale and retail), hatcheries, poultry supply, or other dealers for resale to the ultimate purchasers, and, in some cases, sample sales are made direct to the ultimate purchaser by respondent.

The "Germozone" is an aqueous solution of potassium permanganate, potassium chlorate, aluminum sulphate, potassium chloride and salt, all of alleged antiseptic, germicidal, and astringent-soothing properties. It is administered by mixing with the drinking water of baby chicks and adult fowls, or by direct application to the indi-

vidual bird in divers strengths of solution as directed by respondent on its labels.

The "Gizzard Capsules" are an alleged vermifuge and contain the drugs kamala, nicotine, and pyrethrum in patented insoluble capsules so devised that the said contents will be released only when ground in the gizzard of the fowl and administered by dropping into the chicken's throat.

In the course and conduct of its business as aforesaid respondent is in direct and substantial competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of remedies for diseases and worms in poultry.

PAR. 2. In the course and conduct of its business as aforesaid, by the use of various advertising media, such as published advertisements in poultry and farm journals and other magazines and periodicals having an approximate total circulation of 10,000,000 copies and by the dissemination of about 1,400,000 circulars and pamphlets to the retail trade for redistribution to prospective ultimate purchasers respondent has made and does make many extravagant, false, deceptive, and misleading statements regarding the therapeutic value and efficacy of the aforesaid products as a means for the prevention, relief and cure of diseases and worms in poultry, more particularly as follows:

#### GERMOZONE

There are thousands of baby chicks this year that will pay with their lives for the lack of a little Germozone in their drinking water. Digestive disorders and bowel trouble will cause these great losses . . . take no chances. Germozone purifies the drinking water and even more important it kills germs and guards unceasingly against infection in crop, stomach and intestines . . . This wonderful remedy . . . We are confident that Germozone will prove the best remedy you have ever used to prevent disease and keep your chicks sturdy and strong . . . It acts quickly against the germs and poisons, and helps to heal the affected membrane lining. There is nothing else just like Germozone. It is especially valuable in case of sour crop, simple diarrhoeas, limber neck, ptomaine poisoning, chilling, musty foods, colds, canker, etc. . . . Nine times in ten it is a crop or intestinal infection. The answer is Germozone . . . Germozone—the life saver . . . The reason Germozone is the best first try is because such a very large percent of the common diseases of poultry can be traced to infection in the crop or intestines and Germozone is proven beyond question to be the most

effective medicine against such troubles . . . it both guards the health of the birds that are well and acts as a remedy for the birds that are afflicted . . . Germozone's great curative powers spread over such a wide range of poultry troubles . . . With Germozone you can avoid the crop and bowel infection and diarrhoeas that these germs and bacteria so surely bring on.

and by divers and sundry other statements in said advertisements contained respondent falsely imports and implies that Germozone is a remedy and is efficacious in the prevention, relief, treatment and cure of certain specific diseases and conditions in poultry designated as Bacillary White Diarrhoea, Aspergillosis, Blackhead, Limber Neck, Coccidiosis, Diphtheria, and Pullorum.

#### GIZZARD CAPSULE

A wonderful invention for worming poultry. An insoluble capsule carrying a triple combination worm medicine for tapeworms, roundworms and pinworms. Being insoluble, it passes through the mouth, throat, crop and stomach of the fowl to the gizzard where it is ground up like a grain of corn, pouring the full strength, undiluted medicine directly into the intestines upon the worms. This method is five times as effective as worm remedies given in the food or drink . . . But it is known that only by actually eliminating the intestinal worms can you hope to solve the worm problem . . . Stop this needless waste. Gizzard Capsules will quickly rid your fowls of both tapeworms and roundworms; pinworms, too, if the mouth of the ceca, where the pinworms are found, is not congested or closed.

The foregoing false and misleading representations reach the prospective purchasers directly through the medium of the magazine advertisements, supra, and are passed on to them by the means of the circulars and leaflets distributed by respondent to the retail dealers as aforesaid. The said prospective purchasers, believing and relying on the truth of the aforesaid representations, buy respondent's aforesaid products from the retail hardware, drug stores, hatcheries, poultry supply or other dealers, who in turn have purchased the said products from the respondent for resale.

Whereas in truth and in fact the said product "Germozone" is not an efficacious therapeutic agent for the prevention, relief, treatment, or cure of the aforementioned diseases or conditions in poultry. Said "Germozone" contains drugs, antiseptic and germicidal in character, but a slight addition of organic matter to the drinking water in which it is administered, or contact with the body fluids,



gastric and other organic juices of the fowl, when taken internally, render its antiseptic action so inert that said product is not an effective internal antiseptic nor a remedy nor cure for the aforesaid conditions of internal diseases in poultry.

Also, in truth and in fact the "Gizzard Capsules" aforesaid are not an efficacious vermifuge in the case of pin or tapeworms and, as to the roundworms, actual test showed the "Gizzard Capsules" only 60 percent efficacious as a vermifuge.

PAR. 3. The foregoing extravagant and false representations and each of them are calculated, and have the tendency to mislead and deceive purchasers and prospective purchasers of respondent's products into the erroneous belief that the use of the said products in the manner aforesaid will serve to prevent and remedy the occurrence of the diseases and ailments in poultry aforesaid; and to induce the purchase by consumers of respondent's products in reliance upon such erroneous beliefs; and to divert trade from and otherwise injure competitors of respondents.

PAR. 4. The above 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 proceeding having come on for final hearing by the Federal Trade Commission upon the complaint and the respondent's answer waiving all further proceeding and consenting that the Commission may make, enter, and serve upon it an order to cease and desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises.

*It is now ordered,* That the respondent, George H. Lee Co., a corporation, its agents, representatives, servants, and employees, in connection with the sale or offering for sale in interstate commerce of two products which are of the same composition as those now designated by respondent as "Germozone" and "Gizzard Capsules", cease and desist from directly or indirectly representing:

- (1) With reference to "Germozone", that its use alone constitutes a proper and sufficient treatment or remedial or preventive measure for those certain specific diseases and conditions in poultry known as Bacillary White Diarrhoea, Pullorum disease, Blackhead, Limberneck, Coccidiosis, Diphtheria and Aspergillosis, and

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(2) With reference to "Gizzard Capsules", that their use alone will serve to rid fowls of either pinworms or tapeworm heads.

*It is further ordered,* That the 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  
YOCUM BROTHERS

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

*Docket 1438. Complaint, Feb. 19, 1927—Order, Jan. 23, 1933*

- Consent order requiring respondent corporation, its officers, etc., in connection with sale in interstate commerce of cigars, to cease and desist from—
- (1) Using or causing to be used the word "Cuba", in the brand name or designation "Spana-Cuba", for any such cigars which do not contain any substantial amount of Cuban tobacco, unless in each instance the designation be immediately accompanied by an equally prominent statement clearly indicating absence of Cuban tobacco;
  - (2) Using or causing to be used said word in said brand name for cigars composed in part only of Cuban tobacco, unless brand name be immediately accompanied by an equally prominent explanatory statement indicating such partial content of Cuban tobacco only; and
  - (3) Using or applying any word, name, etc., falsely importing a content of Cuban tobacco in whole or in part, for the particular cigars involved.

*Mr. Henry Miller* 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 Yocum Brothers, a 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 is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in the city of Reading, in said State. It is engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said cigars when so sold to be transported from its said place of business in the city of Reading, Pa., into and through other States of the United States to said vendees 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 cigars in commerce between and among various States of the United States.

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PAR. 2. For many years prior to the date hereof tobacco has been and is now a commercial export product of the Island of Cuba and many of the cigar tobacco trade, the cigar trade and the consuming public have for many years considered and still consider said Cuban tobacco superior in quality for the manufacture of cigars, to tobacco grown elsewhere than on the Island of Cuba. Many among said trades and many of the consuming public have for many years considered and still consider that cigars made of said Cuban tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba.

PAR. 3. Among the cigars manufactured and sold by respondent in interstate commerce as in paragraph 1 hereof set out, is a certain cigar named and designated by respondent "Spana-Cuba". Respondent packs its said "Spana-Cuba" cigars in boxes and containers upon which respondent causes to be set forth in sundry places and positions said name "Spana-Cuba", printed in large and conspicuous letters and upon each said cigar respondent causes to be placed a band and label upon which said name, "Spana-Cuba", is conspicuously printed and set forth. Respondent ships and delivers said cigars so packed, labeled and banded, to its aforesaid dealer vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars, still so packed, labeled and banded, to their said retail dealer vendees. Said retail dealer vendees, both those who purchase said cigars directly from respondent and those who purchase same from said wholesale dealers, offer for sale and sell said cigars, still so packed, labeled and banded, to the consuming public. Further, respondent furnishes and supplies to retail dealers handling said cigars, advertising posters and signs bearing said name and designation "Spana-Cuba", printed thereon in large and conspicuous letters, which said posters are displayed by said retail dealers at their respective places of business for the purpose of advertising and inducing the sale of respondent's said cigars to the consuming public.

PAR. 4. The use by respondent of said name and designation, "Spana-Cuba", in the packing, labeling, banding, and advertising of said cigars, all as in paragraph 3 hereof set out, has the capacity and tendency to and does, mislead and deceive many among the aforesaid trade and many of the consuming public into the belief that respondent's said "Spana-Cuba" cigars are composed of Cuban tobacco referred to in paragraph 2 hereof, and causes many among said trades and many of the consuming public to purchase respondent's said cigars in that belief. In truth and in fact respondent's said "Spana-Cuba" cigars contain no Cuban tobacco referred to in

paragraph 2 hereof, and are composed entirely of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell cigars composed of Cuban tobacco referred to in paragraph 2 hereof, and who rightfully and lawfully represent their said cigars to be so composed. There are others of said competitors who sell cigars manufactured of tobacco other than said Cuban tobacco, who in no wise represent that their said cigars are composed of said Cuban tobacco. Respondent's acts and practices all in this complaint before set out tend to divert business from and otherwise to injure and prejudice said competitors.

PAR. 6. For about 5 years last past respondent has engaged in the acts and practices under the circumstances and conditions and with the results all in this complaint before set out.

PAR. 7. 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 proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to Rule III of the Commission's Rules of Practice as amended and revised to July 1, 1932, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises,

*It is now ordered,* That respondent Yocum Brothers, a corporation, its officers, directors, agents, representatives, servants, and employees cease and desist, in connection with or in the course of the sale or distribution of cigars in interstate commerce—

- (1) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation "Spana-Cuba" for any such cigars which do not contain any substantial amount of Cuban tobacco, unless in each instance when and where so

used said brand name or designation be immediately accompanied or followed by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars do not contain any Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which has been grown in Cuba;

- (2) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation "Spana-Cuba" for any such cigars which are not composed entirely of Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand name or designation containing the word "Cuba" be immediately accompanied or followed by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars are not composed wholly of Cuban tobacco, or that the cigars contain certain tobacco which has not been grown in Cuba;
- (3) From directly or indirectly applying to any cigars sold or distributed in interstate commerce any other word, name, designation, statement, assertion, phrase or representation which implies or imports that said cigars contain Cuban tobacco in whole or in part when such is not the fact.

*It is further ordered,* That said respondent Yocum Brothers, a corporation, shall, within 60 days after the 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 desist hereinabove set forth.

## Complaint

IN THE MATTER OF  
FLECK CIGAR COMPANY

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

*Docket 1453. Complaint, Apr. 7, 1927—Order, Jan. 23, 1933*

Consent order requiring respondent company, its officers, etc., to cease and desist in connection with sale and distribution of cigars in interstate commerce, from—

- (1) Using the word "Cuba" in brand name or designation "Rose-O-Cuba", for (a) any cigars containing no substantial amount of Cuban tobacco, without immediately accompanying or following such brand name or designation with an equally prominent statement or assertion clearly indicating aforesaid facts as to composition of cigars in question, or for (b) any cigars not composed entirely of Cuban tobacco, unless similarly accompanied by an equally prominent, appropriate explanatory statement or phrase as aforesaid;
- (2) Advertising, describing, branding, labeling or otherwise representing any such cigars as aforesaid described, with the words "Havana" or "Habana", or with any words, phrase, etc., falsely importing that cigars in question are composed wholly of Havana or Cuban tobacco;
- (3) Applying to any such cigars any other word, name, etc., falsely implying that Havana or Cuban tobacco is contained in cigars in question.

*Mr. Henry Miller* for the Commission.

*Mr. John W. Townsend*, 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 Fleck Cigar Co., 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 Pennsylvania with its principal office and place of business in the city of Reading in said State. It is engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers and direct to consumers among the general public located and residing at points in various States of the United States. It

causes said cigars when so sold to be transported from its said place of business in the city of Reading, Pa., through and into other States of the United States to said vendees at their respective points of location and residence. 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 cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial product of the Island of Cuba, and the term "Cuban tobacco" has, for many years, meant and still means to the cigar trade and the consuming public, tobacco grown on the Island of Cuba. Many among said trade and many of the consuming public have for many years considered and still consider that cigars made of said Cuban tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba and cigars containing said Cuban tobacco are in great demand among the consuming public in the United States. Said Cuban tobacco is generally known to said trade and to the consuming public as, and is commonly called by them, Havana or Havana tobacco.

PAR. 3. Among the cigars manufactured and sold by respondent in interstate commerce as in paragraph 1 hereof set out are certain cigars named and designated by respondent "Rose-O-Cuba". Respondent packs its said Rose-O-Cuba cigars in boxes and containers upon which respondent causes to be set forth in sundry places and positions said name Rose-O-Cuba printed in large and conspicuous letters and upon each said cigar respondent causes to be placed a brand or label upon which said name Rose-O-Cuba is conspicuously printed and set forth. Further in many instances, respondent causes to be placed upon said cigars individually, a band or label bearing said name Rose-O-Cuba and the word "Habana" printed in large and conspicuous letters. Respondent ships and delivers said cigars so packed, labeled and branded to its aforesaid vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars still so packed, labeled, and branded to their said retail dealer vendees. Said retail dealer vendees offer for sale and sell said cigars still so packed, labeled, and branded to the consuming public.

PAR. 4. The use by respondent of said name and designation, Rose-O-Cuba, and said word "Habana" in the packing, labeling, and branding of its said cigars, all as in paragraph 3 hereof set out, has the capacity and tendency to, and does, mislead many among aforesaid trade and many of the consuming public into the belief



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that respondent's said Rose-O-Cuba cigars are composed of said Cuban or Habana tobacco referred to in paragraph 2 hereof and causes many of said trade and many of the consuming public to purchase respondent's said Rose-O-Cuba cigars in that belief. In truth and in fact respondent's said Rose-O-Cuba cigars contain no afore-mentioned Cuban or Habana tobacco and are composed entirely of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell cigars composed in whole or in part of afore-mentioned Cuban or Habana tobacco and who rightfully and lawfully represent their said cigars to be so composed. There are others of said competitors who sell cigars manufactured of tobacco wholly other than said Cuban or Habana tobacco and who in no wise represent that their said cigars are composed in whole or in part of the last named tobacco. Respondent's acts and practices, all in this complaint above set out, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about five years last past respondent has engaged in the acts and practices under the circumstances and conditions and with the results hereinbefore set out.

PAR. 7. 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 proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to Rule III of the Commission's Rules of Practice as amended and revised to July 1, 1932, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises,

*It is now ordered*, That respondent, Fleck Cigar Co., its officers, directors, agents, representatives, servants, and employees cease and

desist in connection with or in the course of the sale or distribution of cigars in interstate commerce—

(1) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation Rose-O-Cuba for any such cigars which do not contain any substantial amount of Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied or followed by a statement, assertion, or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars do not contain any Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which has been grown in Cuba;

(2) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation Rose-O-Cuba for any such cigars which are not composed entirely of Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand name or designation containing the word "Cuba" be immediately accompanied or followed by a statement, assertion, or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars are not composed wholly of Cuban tobacco or that the cigars contain certain tobacco which has not been grown in Cuba;

(3) From directly or indirectly advertising, describing, branding, labeling, or otherwise representing any such cigars with the words "Havana" or "Habana" or with any other word, phrase, statement, or representation importing or implying that such cigars are composed of Havana or Cuban tobacco, if and when the cigars are not in fact composed wholly of Havana or Cuban tobacco;

(4) From directly or indirectly applying to any of said cigars any other word, name, designation, statement, assertion, phrase, or representation which implies or imports that Havana or Cuban tobacco is contained in said cigars, if or when such is not the fact.

*It is further ordered*, That said respondent, Fleck Cigar Co., shall, within 60 days after the 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 desist hereinabove set forth.

## Complaint

IN THE MATTER OF  
MADISON MILLS, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1999. Complaint, Jan. 23, 1932—Decision, Jan. 24, 1933*

Where a corporation engaged in sale of cotton, and cotton and rayon, men's shirts to consuming public through house-to-house solicitors, set forth upon sample swatch cards for customers' selection, the words "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts", and "Normandy Flannel Shirts", notwithstanding fact that the garments supplied in response to selections thus invited, were not composed of fabrics striped or ribbed with silk woven in the satin weave, or made entirely of wool with nap surface, as understood by trade and public from the words employed; with tendency and capacity to mislead and deceive public and induce purchase of said shirts as and for garments composed of silk or wool, as above set forth, and divert trade to it to the injury of competitors engaged in the sale of accurately labeled and advertised shirts made of cotton, silk, or wool, as the case might be:

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

*Mr. Henry C. Lank* 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 in the sale of men's shirts and other garments to the purchasing and consuming public throughout the United States, through numerous salesmen, agents, and house-to-house canvassers, through sales promotional literature such as letters, leaflets, sample cards, etc., and through advertisements in newspapers and similar publications of general circulation, and with principal office and place of business in New York City, with misrepresenting product as to composition or source or origin, and advertising falsely or misleadingly in said respects, 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 aforesaid for more than two years last past has advertised, offered, and sold shirts dealt in by it, and made in the United States of cotton and rayon also there made, under the designations "Satin Striped Broadcloth Shirts"; "Satin Ribbed Radioux Shirts"; Navarre Flannel Shirts"; and "English Broadcloth Shirts", respectively, notwithstanding the fact

that the shirts referred to by the first two aforesaid designations contained no satin or silk, the so-called "Navarre Flannel Shirts" contained no wool, and the "English Broadcloth Shirts" contained no English broadcloth or fabric made in or imported from England.<sup>1</sup>

Respondent's aforesaid "advertising, describing, representing, offering for sale and selling the said respective shirts as Satin Striped Broadcloth Shirts, Satin Ribbed Radioux Shirts, Navarre Flannel Shirts, and English Broadcloth Shirts, \* \* \* are false, misleading, and deceptive, are and have been calculated, and have and had the capacity and tendency, to mislead and deceive large or substantial numbers of the purchasing and consuming public into purchasing said garments in the erroneous beliefs that (a) said so-called Satin Striped Broadcloth Shirts and Satin Ribbed Radioux Shirts contain silk and satin; (b) that said so-called Navarre Flannel Shirts are made of flannel and contain wool; and (c) that said so-called English Broadcloth Shirts are made of broadcloth manufactured in or imported from England."

Respondent further, as charged, in advertising, representing, describing, offering and selling its said merchandise to the purchasing and consuming public, has caused and still causes, divers and sundry other false statements, representations, and assertions to be made of and concerning its shirts and the fabric from which they are composed, to the effect that certain of said shirts contain silk or satin, or wool and flannel, or are made of fabrics or cloth made in or imported from England, as the case may be; with the effect of misleading and deceiving members of the purchasing and consuming public into buying said garments in an erroneous belief in the truth of such representations, statements and assertions.

Use by respondent, as charged, of such "false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth constitutes 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", many of whom sell and distribute shirts and other garments without misrepresenting the same and the fabrics and cloth of which they are composed, "and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of the marketing of shirts", and "said false, misleading and deceptive acts, practices and methods of respondent, under the circumstances and conditions hereinabove alleged, are unlawful

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<sup>1</sup> As alleged in the complaint, "the said word 'satin' and the word 'flannel' as used by respondent in the designation, description, and representation of its shirts as hereinabove set forth, are, to the purchasing and consuming public, indicative of a silk or wool content of the fabric or cloth and mean, respectively, silk and wool."

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, Madison Mills, Inc., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of the said act.

Respondent filed its answer to the said complaint and hearings were had before an examiner of the Commission theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint. The respondent offered no testimony or evidence in opposition to the said complaint.

Thereupon this proceeding came on for final hearing on the brief of the Commission and oral argument of counsel for the Commission, respondent having been duly notified and not having filed any brief 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 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 several years last past has been engaged in the business of selling men’s shirts and other articles of wearing apparel to the consuming public located throughout the different States of the United States. In the course of its said business respondent was and still is in competition with other corporations, partnerships, and individuals engaged in selling in interstate commerce to consumers and to the trade men’s shirts and similar articles of wearing apparel.

PAR. 2. The respondent employs representatives located throughout the different States of the United States, who go from house to house soliciting and accepting orders for its said shirts and other articles of wearing apparel. In response to orders taken by its

representatives, respondent ships its said products from its place of business in the city of New York to the purchasers thereof located throughout the different States of the United States or to its representatives, who deliver said products to the purchasers thereof.

PAR. 3. In the course of its aforesaid business the respondent issued to its representatives for use in soliciting orders of its said products sample outfits including swatch cards to which are attached samples of materials out of which respondent's shirts are made. These swatch cards are shown and displayed by respondent's representatives to prospective buyers of shirts who examine said sample materials and make such selections as they desire.

PAR. 4. The respondent caused to be printed and represented on said swatch cards to which samples of material are attached the words "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts", and "Normandy Flannel Shirts". The content of the said sample material represented as "Satin Ribbed Radioux Shirts" and "Satin Striped Broadcloth Shirts" was cotton with a rayon stripe or rib. The content of the sample materials represented as "Normandy Flannel Shirts" was all cotton.

PAR. 5. The trade and the consuming public understand the word "Satin", when unqualified without reference to content, to indicate an all silk fabric woven in the satin weave, i.e., made of a thick close texture and overshot wool having a glossy surface. The terms "Satin Ribbed Radioux Shirts" and "Satin Striped Broadcloth Shirts" are understood by the trade and the consuming public to indicate shirts containing a stripe or rib of silk woven in the satin weave. The trade and the consuming public understand the word "Flannel" and the words "Normandy Flannel" to indicate a woolen fabric with a nap surface.

PAR. 6. The representations "Satin Ribbed Radioux Shirts" and "Satin Striped Broadcloth Shirts" on said cards to which was attached shirt materials composed of cotton with a rayon stripe had the tendency and capacity to deceive the public into purchasing respondent's shirts under the belief that such shirts were made out of fabrics containing a stripe or rib of satin content. The representation "Normandy Flannel Shirts" on said cards to which was attached shirt materials composed of cotton had the tendency and capacity to mislead and deceive the public into purchasing respondent's shirts under the belief that such shirts were made of flannel. The term "Normandy Flannel" used by the respondent, in connection with the sale of cotton shirts, a combination of the name of a wool fabric and the name of a section in France noted for producing such fabric, is strongly misleading and deceptive.

PAR. 7. Respondent's aforesaid shirts have been sold by it under the above-mentioned representations in competition with shirts made of cotton and sold under labels indicating that fact; in competition with shirts made of silk under labels indicating that fact, and in competition with shirts made of wool and sold under labels indicating that fact. The use by the respondent of the terms "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts" and "Normandy Flannel" to designate and describe shirts made of cotton or cotton with a rayon stripe or rib had the tendency and capacity to mislead and deceive the public and to divert trade to the respondent to the injury of respondent's said competitors engaged in selling shirts accurately labeled and advertised.

#### CONCLUSION

The practices and methods of competition of said respondent, under the conditions and circumstances described in the foregoing findings, 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 and the testimony and evidence taken, and the brief and oral argument of counsel for the Commission, 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, Madison Mills, Inc., its officers, agents, representatives, and employees do cease and desist from—

(1) Employing or using directly or indirectly on swatch cards, labels, or in advertising, or otherwise, in connection with the sale in interstate commerce of shirts or other wearing apparel composed of cotton with rayon stripes or ribs, the words "Satin Ribbed Radioux Shirts" or "Satin Striped Broadcloth Shirts", unless there be added in letters equally conspicuous and on the same side of the swatch card, label or advertising matter on which said words appear, the words "Rayon

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Satin Ribbed Radioux Shirts", "Rayon Striped Broadcloth Shirts" or equivalent modifying terms.

(2) Employing or using directly or indirectly on swatch cards, labels, or in advertising, or otherwise, in connection with the sale in interstate commerce of shirts or other wearing apparel composed of cotton, the words "Normandy Flannel" or the word "Flannel."

*It is further ordered,* That the said respondent within 60 days after 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  
JOSEPH TOBIAS, AN INDIVIDUAL TRADING AS  
NATIONAL IMPORTING 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 2005. Complaint, Feb. 4, 1932—Decision, Jan. 25, 1933*

Where an individual engaged in sale of dress goods, wash fabrics, draperies, and other similar products to the consuming public through agents or canvassers,

- (a) Displayed and featured trade name containing the words "Importing Company" on swatch cards, circulars, letterheads and envelopes supplied for agents' use in selling said products, notwithstanding fact dress goods, wash fabrics, and draperies offered and sold by him were of domestic origin, and linens and handkerchiefs purchased from importers represented less than 10 percent of merchandise dealt in by him; and
- (b) Used such designations on swatch cards as "Silk Finish", "Sylkiana", "Foulard", "Shantung", "Silksheen", "Superay Taffeta", "Shantora Crepe" or "Shanteen Crepe", notwithstanding fact fabrics referred to contained no silk, product of the cocoon of the silkworm;

With capacity and tendency to mislead purchasing public as to composition of said products and trade status of said individual as an importer and induce purchase of his said products in such erroneous beliefs, and divert trade from and otherwise injure (1) competitors in fact importing dress goods, fabrics, wash goods and similar products, preferred to the domestic by a substantial portion of the consuming public, for resale to jobbers, wholesalers and retailers, and (2) competitors manufacturing, wholesaling, and retailing the domestic products under correct labels without describing themselves as importers or importing companies:

*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.

*Mr. Henry Halpern*, 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 individual, engaged as National Importing Co. in the sale direct to the consuming public, through house to house canvassers, of dress goods, wash fabrics, drapings, and other similar products, and with principal office and place of business in New York City, with using misleading trade name as to business status, misbranding or mislabeling as to composition of product, and

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advertising falsely or misleadingly in said respects, 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 aforesaid, employs, features, and displays his trade name containing the word "Importing" in advertisements, swatch cards, circulars, letterheads, etc., and sets forth upon the sample cards supplied to his said canvassers the words "Silk Finish, Sylkiana, Foulard, Shantung, Silksheen, Superay Taffeta, Shantora Crepe or Shanteen Crepe", notwithstanding fact that he does not import products dealt in by him, and products represented by aforesaid designations on their swatch cards, contain no silk, product of the cocoon of the silkworm; with capacity and tendency to mislead and deceive purchasing public into believing aforesaid products to have been imported and to be composed wholly of silk, product of cocoon of the silkworm, and to induce and with the effect of inducing the purchase of said products in reliance on such belief, and thereby divert trade from and otherwise injure competitors, many of whom as manufacturers, dealers, and distributors of products concerned, market same under truthful representations to the purchasing and consuming public, and do not use such false or misleading representations.<sup>1</sup>

The use by respondent, as charged, of such "false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth, constitutes 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 dress goods, wash fabrics, and draping business"; and "Said false, misleading, and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Joseph Tobias, an

<sup>1</sup> As alleged in the complaint, the various designations are generally understood by the purchasing public to mean products composed wholly of silk, the product of the cocoon of the silkworm, and the word "Importing", as used by respondent, is understood by said public to mean a firm "engaged in the business of importing product from foreign countries for resale."

individual trading as National Importing 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 the Commission and upon behalf of the respondent before a trial examiner of the Commission duly appointed thereto. The said trial examiner heretofore filed his findings of fact herein and the counsel; for the respondent thereupon filed his exceptions thereto. Thereupon this proceeding came on for final hearing on the record and briefs of counsel for the Commission and for the respondent. Oral argument having been waived by counsel for the Commission and counsel for the respondent and the Commission having duly considered the matter 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. Respondent, Joseph Tobias, is an individual trading under the name and style of The National Importing Co. His office and place of business is located in the city of New York in the State of New York. He is engaged in offering for sale and selling dress goods, wash fabrics, draperies and other similar products. In the sale of respondent's products, sales are made and orders taken from the consuming public by agents or personal representatives of the respondent. Such agents or representatives are located in the several States of the United States. Such orders are forwarded to the respondent in New York, and the materials so ordered are shipped by the respondent to the said personal agents or representatives (sometimes called dealers) from respondent's place of business in New York City into and through other States of the United States to the several places of residences of said agents or personal representatives in the several States of the United States. The agents or personal representatives in turn make deliveries of said products to those of the consuming public who have purchased them. In the course and conduct of his business respondent is in competition with other individuals and with firms, partnerships, and corporations engaged in offering for sale and selling dress goods, draperies, wash fabrics, and other similar articles in interstate commerce.

PAR. 2. Respondent obtains his agents and representatives by inserting advertisements for such agents or representatives in such magazines as True Romances, True Story, Physical Culture, and McCall's. Such agents or representatives, after having been ap-

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pointed by respondent as agents or representatives, are furnished by respondent with swatch cards and supplies. Respondent has approximately three thousand agents or representatives operating in the various States of the United States. Not all of these agents or representatives are active at all times. Approximately 50 percent of them are on respondent's active list at any given time. These agents or representatives make sales of respondent's products direct to the consuming public, deduct 25 percent of the selling price as commission and remit the balance to the respondent. Respondent sells his merchandise in this manner in every State of the United States and also in Hawaii, the Philippines, Cuba, Canada, and Alaska.

PAR. 3. Respondent began business in 1907 under the trade name The National Importing Co. In the years immediately following his start in business respondent did some importing of goods from foreign countries, but during the progress of the World War the channels of importing being uncertain, respondent ceased to import his merchandise from foreign countries and has never resumed such importations. Since 1918 all dress goods, wash fabrics, and draperies offered for sale and sold by respondent have been manufactured in the United States. Respondent is now, and since 1918 has offered for sale and sold linens and handkerchiefs which are purchased by the respondent in the United States from importers who have imported such linens and handkerchiefs from foreign countries. The said linens and handkerchiefs represent less than 10 percent of the goods, wares, and merchandise offered for sale and sold by respondent.

PAR. 4. The respondent causes the trade name The National Importing Co. to be featured and displayed on the swatch cards, circulars, letterheads, and envelopes which he furnishes to his agents and representatives for the purpose of assisting them in making sales of respondent's fabrics, draperies, dress goods, and other similar products. The said agents or representatives use the said swatch cards, circulars, letterheads, and envelopes which are furnished by respondent to the said agents and representatives throughout the various States of the United States, in connection with the offering for sale and sale of respondent's products to the consuming public by displaying to members of the consuming public the said swatch cards and other advertising media.

PAR. 5. The said swatch cards furnished by respondent to his agents and representatives and used by them as aforesaid, have attached to them various samples of certain fabrics offered for sale and sold by respondent. In addition to the samples attached to the said swatch cards, respondent causes to be printed on certain of such cards one or more of the following words or phrases: Silk Finish,

Sylkiana, Foulard, Shantung, Silksheen, Superay Taffeta, Shantora Crepe or Shanteen Crepe. The said fabrics on said swatch cards are composed entirely of a product other than silk, and contain no silk, the product of the cocoon of the silkworm. The words Sylkiana, Foulard, Shantung, Silksheen, Superay Taffeta, Shantora Crepe, Shanteen Crepe, and the words Taffeta and Crepe each and all of them when unqualified, are understood by the purchasing public to describe fabrics composed wholly of silk. The words silk finish mean when unqualified that the fabric to which it is applied is, so far as the finish of the fabric is concerned, composed of silk.

PAR. 6. The word "importing" when used as a part of a trade name as it is used by respondent, is understood by the purchasing public to designate a firm engaged in the business of importing products into the United States from a foreign country for resale.

PAR. 7. There are in the United States many firms, partnerships, individuals, and corporations engaged in importing into this country from foreign countries, dress goods, fabrics, wash goods, and similar products. These importing organizations in turn resell in interstate commerce such imported products to jobbers, wholesale dealers, and to retail dealers who afterwards resell to the consuming public such imported dress goods, fabrics, wash goods, and similar products. Imported dress goods, fabrics, wash goods and similar products are preferred over domestic dress goods, fabrics, wash goods and similar products by a substantial portion of the consuming public. There are in the United States many manufacturers, wholesale dealers and retail dealers who sell and distribute in interstate commerce domestic dress goods, wash fabrics, draperies, and similar products, who market such dress goods, fabrics, and similar products to the consuming public under labels that are descriptively correct, and who do not call themselves importers or importing companies.

PAR. 8. In the latter part of 1931 respondent discontinued the use of the words "Silk Finish", "Foulard", "Shantung", "Silksheen", "Sylkiana", "Superay Taffeta", and "Shanteen Crepe" to designate fabrics containing no silk, the product of the cocoon of the silkworm.

PAR. 9. The use by the respondent of such words and phrases as above set out in connection with or as designating and describing his products and his trade status has the capacity and tendency to mislead the purchasing public into the belief that his said products and his said trade status so represented, designated, described, and referred to are as represented, designated, described, and referred to, and tends to induce the purchase of respondent's products in reliance upon such erroneous belief or beliefs and to divert trade from and otherwise injure competitors of respondent.

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## CONCLUSION

The practice of the 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 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, evidence, and briefs of counsel, 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 Joseph Tobias, his agents, representatives, servants, and employees in connection with the offering for sale and sale in commerce among the several States of the United States of dress goods, wash fabrics, draperies, and other similar products, cease and desist from directly or indirectly:

(1) Using the terms "Sylkiana", "Foulard", "Shantung", "Silksheen", "Superay Taffeta", "Shantora Crepe", "Shanteen Crepe", or the word "Taffeta" or the word "Crepe", as descriptive of fabrics not composed entirely of silk.

(2) Using the term "Silk Finish" as descriptive of fabrics the finish of which is not composed of silk.

(3) Representing, either by the use of the word "importing" in a trade name, or in any other way, that the respondent is an importer, unless and until a substantial part of the products sold by respondent is imported.

*It is further ordered*, That the respondent, Joseph Tobias, shall within 30 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 hereinabove set forth.

## Complaint

## IN THE MATTER OF

MORRIS HELLER, INDIVIDUALLY, AND TRADING AS  
VENICE IMPORTING 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 2074. Complaint, Oct. 25, 1932—Decision, Jan. 25, 1933*

Where olive oil from Italy had come to be known among a substantial number of users and consumers and merchants and dealers as superior in quality and flavor to all other, and that from the world olive oil center, Lucca, had similarly become known for its fine quality and delicate flavor; and thereafter an individual engaged in sale and distribution of said product to retail grocers, advertised same as "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil", notwithstanding fact it had no Italian origin; with capacity and tendency to mislead and deceive substantial numbers of dealers and consuming public into purchasing said oil as and for one imported from Italy:

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

*Mr. Henry C. Lank* for the Commission.

*Mr. Charles F. Murphy*, 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 individual, engaged as Venice Importing Co., in the sale and distribution of olive oil to retail grocers in States other than New York, and with principal office and place of business in Brooklyn, with advertising falsely or misleadingly as to 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; in that respondent sells olive oil having no Italian origin, under the designations "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil"; with the capacity and tendency to mislead and deceive substantial numbers of retail grocer dealers and the consuming public into buying such oil as and for olive oil imported from Italy, preferred for its superior quality and flavor and especially in the case of that from the great olive oil center—Lucca—to other oils, and with the further tendency to and effect of prejudicing and injuring the public, unfairly diverting trade from and otherwise prejudicing and injuring competitors, and operating as a restraint upon and a detriment to

the freedom of legitimate and fair competition in the business of marketing olive oil.

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 October 25, 1932, issued its complaint against Morris Heller, individually, and trading as Venice Importing Co., hereinafter referred to as respondent, and on October 26, 1932, caused the said complaint to be served upon respondent as required by law, in which complaint it was charged that respondent was using unfair methods of competition in interstate commerce in violation of the provisions of said act. By notice contained in said complaint respondent was notified and required to file with the Commission an answer to said complaint on or before the second day of December, A.D. 1932 (the same being more than 30 days after the service of said complaint) unless said time be extended by order of the Commission 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 provision being set forth in haec verba in said notice and providing in part as follows (Rule III, sub. div. 3):

Failure of the respondent to appear or to file answer within the time 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 his appearance to be entered in this proceeding nor has he at any time made or filed answer to said complaint. He has at no time requested that the time within which he might 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 its report in writing stating its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morris Heller, is an individual and trades under the name Venice Importing Co. Respondent maintains his principal office and place of business in the city of Brooklyn,



State of New York. He is and for more than two years last past has been engaged as hereinafter described in the business of selling and distributing olive oil to retail grocery dealers located in States other than the State of New York. In consummating such sales and in distributing said merchandise, respondent causes the olive oil so sold to be transported and delivered from his place of business in the city of Brooklyn, State of New York, through and into various other States of the United States to the respective purchasers thereof at their several points of location. At all times herein mentioned, there have been and are many individuals, partnerships and corporations engaged in the sale and distribution of olive oil to retail grocery dealers in commerce in, between and among the several States of the United States. Respondent has been and still is conducting his said business of selling and distributing in interstate commerce olive oil in direct, active competition with said individuals, partnerships, and corporations.

PAR. 2. In the sale and distribution of his olive oil to retail grocery dealers as hereinabove described, respondent has caused and still causes large and substantial quantities of his said olive oil to be advertised, offered for sale, sold and distributed under the designations, descriptions, and representations as follows: "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil."

The designations, descriptions, or representations imported from Lucca, Italy, importato de Lucca Italia, mean to the retail grocery dealers and the consuming public that the olive oil so designated, described, and represented was imported from Lucca, Italy. The word "Reginella" being of Italian origin means to the retail grocery dealers and to the consuming public that the olive oil so designated, described, and represented is from Italy.

PAR. 3. The said olive oil designated, described, and represented and marketed by respondent as imported from Lucca, Italy, importato de Lucca Italia, Reginella brand choice pure olive oil, was not imported from Lucca, Italy, and had no Italian origin.

PAR. 4. Olive oil imported from Italy has come to be known among a substantial number of the users and consumers of olive oil and among merchants and dealers in olive oil as being of a superior quality and flavor to all other olive oil. Lucca, Italy, is one of the largest olive oil centers in the world and the olive oil produced there and imported from there has become known among a substantial number of the users and consumers of olive oil and among merchants and dealers in olive oil for its fine quality and delicate flavor.

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PAR. 5. Respondent's use of the words and phrases "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella brand choice pure olive oil", in designating, describing and representing and offering for sale and selling his said olive oil as described in paragraph 2 hereof is false, misleading, and deceptive and has the capacity and tendency to mislead and deceive substantial numbers of retail grocery dealers and of the consuming public into purchasing said olive oil in the erroneous belief that said olive oil was imported from Italy.

## CONCLUSION

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 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."

## ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon 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 Morris Heller, individually and trading as Venice Importing Co., his agents, representatives, and employees in connection with the sale or offering for sale of olive oil in interstate commerce do cease and desist from using the following words, phrases, statements, or representations or any of them or any words, phrases, statements, or representations of like effect:

(a) Imported from Lucca, Italy;

(b) Importato de Lucca Italia;

unless or until respondent's olive oil is in fact imported from Lucca, Italy.

*It is further ordered*, That the respondent Morris Heller, individually and trading as Venice Importing Co. 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 hereinabove set forth.

## Syllabus

IN THE MATTER OF  
THE ARMAND COMPANY, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1329. Complaint, June 27, 1925—Decision, Jan. 27, 1933*

Where a corporation engaged in manufacture, preparation, and extensive advertisement of toilet articles and cosmetics, including face powder, cold cream, and other merchandise of similar description, and in the sale of its said largely demanded products, under its name and mark on packages and containers in which offered the public, through wholesale, and retail, druggists, chiefly, and under a sales plan in accordance with which it included with vendees' orders one fourth dozen units for each dozen purchased from it, and wholesale dealers purchasing its said products from others did not have the benefit of such additional units; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its products at wholesale and at retail, through the medium of specified discounts from uniform retail price lists enclosed with each product,

(a) Made said policy generally known through order forms and trade papers, and otherwise, and its purpose to decline or discontinue dealings with those who refused to conform to said policy and prices, and did so decline or discontinue pending the giving of solicited oral, or written, assurances, or the signing or making of so-called "declarations of intention", suggested by it, in accordance with which many dealers undertook both to respect its said prices and disavow any express or implied agreements so to do, and through the agreements thus in fact brought about, notwithstanding its studied disavowals, led to initiation or resumption of relations, discontinuance of price cutting and maintenance of its prices by dealers, including wholesale and retail drug concerns, and the many retail stores, and mail order department of a very large mail-order house; and

(b) Entered into agreements with wholesale dealer customers, pursuant to which they obligated themselves not to resell, and did not resell, its products to price cutting retail dealers including mail order houses and department stores, and took steps to cut off price cutters' sources of supply;

With the result that competition in the distribution and sale of its aforesaid products among wholesale and between retail dealers was suppressed, said dealers were constrained to sell such products at the wholesale and retail dealer prices fixed by it as aforesaid, and were prevented from selling the same at such lower prices as they might desire, and ultimate purchasers were deprived of the advantage in price which they would have otherwise obtained from the natural and unobstructed flow of commerce in the products involved under methods of free competition:

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

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*Mr. Edward E. Reardon* for the Commission.

*Mr. Charles Wesley Dunn*, 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 the various corporations, firms, and individuals, mentioned in the caption hereof,<sup>1</sup> and more particularly hereinafter described and referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of said act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Armand Company, hereinafter referred to as The Armand Company, is a corporation organized prior to November 1, 1919, under the laws of the State of Iowa, having its principal office and place of business in the city of Des Moines in said State.

Since on or about November 1, 1919, The Armand Company has been continuously, and now is, engaged in the manufacture, preparation, and sale of toilet articles and cosmetics, including face powder and cold cream, and other merchandise of similar description, hereinafter referred to as the products of The Armand Company, which have been and are manufactured and prepared by The Armand Company by means of secret formulae or processes known only to The Armand Company or its agents.

The Armand Company causes, and during said times has caused, its said products to be packed or wrapped in the packages or wrappers, in which they are and have been displayed for sale and sold to the members of the public purchasing them for use or consumption.

<sup>1</sup> Corporations, etc., referred to, follow:

The Armand Co., Inc.; Carl Weeks, individually and as president of The Armand Co.; Chet V. Gibson, individually and as vice president of The Armand Co.; Frank M. Stevens, individually and as vice president of The Armand Co.; Jessie E. Moore, individually and as secretary of The Armand Co.; Charles A. Bucher, individually and as agent of The Armand Co.; Ralph R. Morris, individually and as agent of The Armand Co.; Spurlock-Neal Co., Inc.; Berry, DeMerville & Co., Inc.; Robinson-Pettet Co., Inc.; Lamar & Rankin Drug Co., Inc.; Greiner-Kelly Drug Co., Inc.; The J. W. Crowds Drug Co., Inc.; San Antonio Drug Co., Inc.; Western Wholesale Drug Co., Inc.; Fuller-Morrison Co., Inc.; Humiston, Keeling & Co., Inc.; Peter Van Schauck & Sons, Inc.; The McPike Drug Co., Inc.; Faxon-Gallagher Drug Co., Inc.; J. S. Merrell Drug Co., Inc.; A. M. Berry, A. D. Berry, F. S. Berry, W. D. Phillips, M. P. Williams, the first names being unknown to the Federal Trade Commission, copartners doing business under the trade name of Berry, DeMerville & Co.; The Fair, Inc.; E. H. Cone, Inc.; T. C. Marshall, doing business under the name of Marshall's Pharmacy; Clarence E. Jeffares and Malcolm J. Long, copartners, doing business under the trade name of Jeffares-Long Drug Co.; Owl Drug Co., Inc.

The said packages or wrappers had and still have the word "Armand" printed or displayed thereon, as the trade mark of said company, and The Armand Company causes, and during the above times has caused, the word "Armand" to be used and displayed as part of the name, designation, or description of the content of the said packages or wrappers, as, for example, "Armand Cold Cream Powder", "Armand Bouquet Powder", and "Armand Cold Cream Rouge", etc.

In consequence of the manufacture or preparation of the said products of The Armand Company by or under secret formulae or processes as above set forth, the names and said trade mark, above referred to and described, on the said packages or wrappers, respectively, are the sole means of the identification of said products by the trade or by the users or consumers thereof in the purchase and sale of the same, and during the said times The Armand Company is and has been by reason thereof the sole source of supply of the same, and has had and continues to have a pure monopoly in their production, and in the first or original sale of the same in the order of their distribution as part of the general merchandise stock in the United States to the members of the public who purchase the same for use or consumption.

The said products of The Armand Company are and have been useful and necessary articles of merchandise and during the aforesaid times there has been and is a substantial demand therefor throughout the United States by members of the public, users or consumers thereof.

PAR. 2. During the aforesaid times, the respondent, Carl Weeks, is and has been the president and treasurer, respondents Chet V. Gibson and Frank M. Stevens the vice presidents and respondent Jessie E. Moore the secretary of The Armand Company above named. The said officers were also the directors of The Armand Company and as such officers and directors were in control of its business and authorized and empowered to do the acts and things on its behalf hereinafter specified. The respondents Charles A. Bucher and Ralph R. Morris, have been and are the agents, respectively, of The Armand Company, in the cities of Pittsburgh in the State of Pennsylvania, and Chicago in the State of Illinois.

PAR. 3. The following respondents, above named, are corporations, organized, respectively, under the laws of the following States, having their usual and principal places of business, respectively, in the following cities in the said States: Spurlock-Neal Co. and Berry, DeMoville & Co., in Nashville, Tenn.; Robinson-Pettet Co., in Louis-

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ville, Ky.; Greiner-Kelly Drug Co. and The J. W. Crowds Drug Co. in Dallas, Tex.; San Antonio Drug Co., in San Antonio, Tex.; Lamar & Rankin Drug Co., in Atlanta, Ga.; Western Wholesale Drug Co., in Los Angeles, Calif.; Fuller-Morrison Co.; Humiston, Keeling & Co., and Peter Van Schaack & Sons, in Chicago, Ill.; McPike Drug Co., and Faxon-Gallagher Drug Co., in Kansas City, Mo.; and J. S. Merrell Drug Co., in St. Louis, Mo.

A. M. Berry, A. D. Berry, F. S. Berry, W. D. Phillips, and M. P. Williams, respondents above named, are individuals who were copartners doing business under the trade name of Berry, DeMerville & Co. The said copartnership having been dissolved, the above corporation, Berry, DeMerville & Co., was organized on March 4, 1925, and took over and has since conducted the business formerly conducted by the said partnership and with the same executive and sales organization and policies.

The respondents above named were and are separately and severally engaged in the wholesale drug business and during the aforesaid times were and are wholesale dealers competing generally with each other and with other dealers hereinafter referred to as "dealers not specifically named as respondents", in the same territory in the sale of toilet articles, cosmetics, and similar merchandise, packed or wrapped in packages or wrappers in which the same are and have been displayed and sold to members of the public purchasing the same for use or consumption, and which when sold by said respondents are and have been caused by them to be transported to the purchasers thereof located in various States of the United States, other than in the State of origin of the shipments.

PAR. 4. During the aforesaid times, the respondent, The Fair, is and has been a corporation organized under the laws of the State of Illinois with its usual place of business in the city of Chicago in said State; the said respondent conducts a retail department store and is and has been engaged in the sale at retail of toilet articles, cosmetics, and similar merchandise, packed or wrapped in packages or wrappers in which the same are displayed and sold to members of the public purchasing the same for use or consumption; respondent, E. H. Cone, Inc., is and has been a corporation organized under the laws of the State of Georgia, with its usual place of business in the city of Atlanta in said State; respondent T. C. Marshall, the first name being unknown to the Federal Trade Commission, is an individual doing business under the name of Marshall's Pharmacy in the said city of Atlanta; respondents Clarence E. Jeffares and Malcolm J. Long, are and have been copartners doing business under the trade name of Jeffares-Long Drug Co., with their principal place of

business in the aforesaid city of Atlanta; and respondent, Owl Drug Company, is and has been a corporation organized under the laws of the State of Missouri with its usual place of business in Kansas City in said State. The respondents above named in paragraph 4 herein, with the exception of The Fair, are and have been engaged in the business of selling drugs at retail and in connection with their said businesses are and have been engaged in the sale at retail to the members of the public of toilet articles, cosmetics, and similar merchandise, packed or wrapped in packages or wrappers in which the same are and have been displayed and sold to members of the public purchasing the same for use or consumption. All of the aforesaid respondents herein are and have been competing generally with each other and with other dealers, hereinafter referred to as "dealers not specifically named as respondents", in the same territory in the sale of toilet articles, cosmetics, and similar merchandise, packed or wrapped as aforesaid.

PAR. 5. The Armand Company during the aforesaid times has continuously sold and now sells its said products, packed or wrapped as aforesaid, to individuals, firms, and corporations, retail dealers throughout the United States, including those mentioned above in paragraph 4 herein, who resell and have resold the same to the said members of the public, and The Armand Company has also during said times sold and continues to sell its said products to individuals, firms, and corporations, wholesale dealers, throughout the United States, including those mentioned above in paragraph 3 herein, who sell and have sold the same to retail dealers for resale to the said members of the public.

The Armand Company causes, and during the times above mentioned has caused, its said products when sold by it, to be transported from without the District of Columbia, packed or wrapped as described above, to the said purchasers, individuals, firms, and corporations, the wholesale and retail dealers above mentioned and referred to, located in the District of Columbia, and in the various States of the United States, other than in the State of origin of the shipment.

During the times above mentioned, other individuals, firms, and corporations have been, and now are, engaged in manufacturing and selling toilet articles, cosmetics, and similar merchandise, packed or wrapped in the packages or wrappers in which they are and have been displayed for sale and sold to the members of the public purchasing them for use or consumption, and who cause and have caused the same, when sold by them, to be transported from without the District of Columbia to the purchasers, individuals, firms,

and corporations, wholesale and retail dealers, located in the District of Columbia and in the various States of the United States, other than in the State of origin of the shipment, and including those States into which, from other States than those in which its shipments originate, The Armand Company causes and has caused its said products to be transported.

The Armand Company has been during said times and now is in competition in commerce with the above individuals, firms, and corporations, in the sale of its said products.

PAR. 6. The Armand Company, its officers and agents, including its officers and agents named as respondents herein, and the other respondents above named in paragraphs 3 and 4 herein, continuously during the above period from on or about November 1, 1919, to the date hereof have been, and are, unlawfully, knowingly and with intent so to do, engaged in a conspiracy, common understanding, combination and agreement with and among themselves and, from time to time during the aforesaid period with certain other individuals, firms, and corporations engaged in the wholesale and retail drug business throughout the United States hereinafter referred to as "dealers not specifically named as respondents", their officers and agents (the particulars of whose names, addresses, and places of business are at present unknown to the Federal Trade Commission, and owing to their large and changing number cannot be obtained without unduly delaying this proceeding, so that it is impracticable to ascertain and set forth their names herein), to monopolize and unduly, unreasonably, directly and oppressively to restrain the interstate business, trade, and commerce of respondents, of the aforesaid "dealers not specifically named as respondents", and of their competitors, and the interstate business, trade and commerce in the said products of The Armand Company, and in accordance with and in pursuance of said conspiracy, common understanding, combination and agreement the respondents and those referred to above as "dealers not specifically named as respondents" have monopolized, and unduly, unreasonably, directly and oppressively have restrained the interstate trade and commerce of themselves, of their competitors and the interstate business, trade and commerce in the said products of The Armand Company—

(a) By selling the said products at uniform, noncompetitive wholesale and retail prices, arbitrarily suggested and fixed by The Armand Company, its officers and agents, largely in excess of the wholesale and retail prices which would have prevailed for the said products to retail dealers and the public purchasing the same for use or consumption if the respondents had not engaged in the con-



spiracy, common understanding, combination and agreement aforesaid, and which return and have returned to the retail dealer respondents and the other retail dealers, referred to among those not specifically named as respondents herein, profits of approximately 100 percent upon the purchasing price of the same.

(b) By refusing to sell the said products, with unimportant exceptions, to wholesale and retail dealers other than to those engaged in the drug business.

(c) By refusing to sell the said products to wholesale and retail dealers who sold or intended to sell the same at prices other than the aforesaid suggested or fixed prices, or who sold the said products to other dealers who resold or intended to resell the same at other than the said fixed prices.

PAR. 7. In the accomplishment and furtherance of the aforesaid conspiracy, common understanding, combination and agreement the respondents, The Armand Company, its officers and agents, on or about November 1, 1919, and continuously since then to the date hereof have suggested and fixed uniform wholesale and retail prices for the products of The Armand Company and have caused the said retail prices to be printed on the packages or wrappers of the said products, displayed for sale and sold to the public as aforesaid. They have by national advertising in newspapers and magazines and by other means created and caused a substantial demand among the members of the said public for the use or consumption of the said products as necessary and useful articles, and not having offered, sold or distributed the said products directly from The Armand Company to the said users or consumers thereof, but on the contrary offering and having offered the same for sale and distribution to the said public solely through the ordinary and usual channels of trade in and distribution of such products from producer to consumer, the wholesale and retail dealers in the same throughout the United States, including the respondent wholesale and retail dealers and the said dealers not specifically named as respondents, who are and were separate and distinct entities and who were and should have been conducting business in full and free competition with each other as to prices and conditions of sale, the said respondents, The Armand Company, its officers and agents, continuously during the aforesaid period, by reason of and relying on the aforesaid monopoly of The Armand Company in the production and first sale of its said products to effectuate the same—

(1) Have announced and made known generally to all wholesale and retail dealers in toilet articles, cosmetics, and similar merchandise throughout the United States, including the respondents and

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those dealers referred to, not specifically named as respondents herein, by letters, personal interviews, and by statements and conditions printed on the order blanks used and signed by purchasers from The Armand Company in buying said products and by other means, that The Armand Company had adopted and was maintaining a policy of suggesting to wholesale and retail dealers the resale prices of its said products;

(2) Have announced continuously to the said dealers, generally, that as part of its said policy The Armand Company would decline to sell to dealers who sold its said products at prices other than the said uniform suggested or fixed prices or who sold them to others who did, and during said times have refused to sell to all such dealers who so sold the said products;

(3) Have announced it generally by the aforesaid means as their practice and have made it their practice during the said times to secure from all persons or dealers, who dealt in or who desired to deal in the products of The Armand Company, oral or written declarations, understandings or agreements as to whether the said persons or dealers would resell the said products at the said suggested or fixed resale prices, and have announced, generally, that The Armand Company would sell its said products for resale to those persons or dealers only, whose expressed or understood intentions were satisfactory to The Armand Company, its officers and agents, in accordance with the said plan or policy of the said company;

(4) Have continuously during said times required retail dealers, including those named and those referred to and not specifically named as respondents herein, who had purchased and were the owners of the said products of The Armand Company not to sell the said excepting at retail within the purchaser's own store and not to split or to divide the said products, so purchased and in their ownership and possession, with any other dealer therein, under threat of refusal to further sell or to permit others to sell to said retail dealers the products of The Armand Company;

(5) Have continuously during said times required wholesale dealers, including those mentioned and those referred to and not specifically mentioned as respondents herein, who had purchased and were owners of the products of The Armand Company, not to sell or deliver any of their said products so owned by them to certain other dealers in such products, or to certain or any other dealers in or within certain prescribed areas or communities in a State or States or municipality thereof indicated by The Armand Company, its officers and agents, but to turn over the orders received by them from others

in said indicated areas or communities to The Armand Company to be rejected or filled and the said products sold and delivered for the account of the said dealers, the aforesaid owners of the said products purchased from The Armand Company, at the discretion of The Armand Company, for the purpose of preventing its said products from being sold out of the stock of the same owned by the said dealers to other dealers, who, with unimportant exceptions are not engaged in the wholesale or retail drug business or who have resold the said products at other than the said suggested or fixed prices, and for the purpose of demonstrating to dealers, generally, that The Armand Company, its officers and agents, could and did prevent dealers from obtaining the said products for sale in their business who did not observe the said policy or plan of The Armand Company, its officers and agents, or the said suggested or fixed prices thereof for its said products in reselling the same;

(6) Have continuously during said times and by way of threats informed wholesale and retail dealers in such products, including those mentioned and those referred to and not specifically mentioned as respondents herein, of instances wherein The Armand Company, its officers and agents, have ceased to fill orders for its said products from dealers who have sold the same or sold to others who sold the same at prices other than the said suggested or fixed prices of The Armand Company, with the purpose and effect of notifying and threatening said dealers that The Armand Company, its officers and agents, would take the same action with them under similar circumstances or conditions;

(7) Have continuously during the aforesaid times solicited and secured directly through the officers of The Armand Company, and its agents, and from wholesale and retail dealers, including those mentioned and those referred to and not specifically named as respondents herein, selling or dealing in the products of The Armand Company, information and reports concerning the sales of the said products and those dealers selling them at other than the said suggested or fixed prices or to dealers other than those engaged in the drug business, with unimportant exceptions, and upon obtaining such information and reports have urged those dealers so reported to cease selling at other than the said suggested or fixed prices or to dealers not engaged in the drug business;

(8) Have during said times caused identifying numbers or marks to be placed upon the cases, packages or wrappers of the products of The Armand Company for the purpose of tracing the ownership and possession of the same after their sale by The Armand Company and learning the names of dealers, who sell or have sold the same at

other than the said suggested or fixed prices or who have sold them to others who have so sold them, or the names of those who have sold them to dealers other than those engaged in the drug business in order to urge, induce, coerce and restrain the said dealers from selling the said products at other than the said suggested or fixed prices or selling them to others who so sell the said products or from selling them to dealers other than those engaged in the drug business, and by reason of the foregoing The Armand Company, its officers and agents, have during the aforesaid times learned from their competitors and others the names of dealers who have not observed the aforesaid conditions regarding the sale of the said products and have induced, coerced, and restrained said dealers, including those mentioned and those referred to and not specifically mentioned as respondents herein, from continuing the sale of the said products other than in accordance with the said plan or policy of The Armand Company as to the said suggested or fixed prices or the other respects above mentioned and set forth;

(9) Have continuously during the said times made it their general, uniform policy or plan, with unimportant exceptions, to refuse to sell and they have in accordance therewith refused to sell the products of The Armand Company to any dealer in such merchandise, excepting to those conducting the wholesale or retail drug business and have during said times as part of said policy or plan refused to permit and have prevented dealers, including those mentioned and those referred to and not specifically mentioned as respondents herein, who had bought the products of The Armand Company and were the owners and in possession thereof, from reselling out of their said stock of said products in their said ownership and possession, any of the same to dealers, with unimportant exceptions, other than to those engaged in the drug business.

PAR. 8. In the accomplishment and furtherance of the aforesaid conspiracy, common understanding, combination and agreement, the respondents above named, the wholesale and retail dealers mentioned in paragraphs 3 and 4 herein and those referred to and not specifically mentioned as respondents, well knowing the aforesaid policy or plan of The Armand Company, its officers and agents, and the acts and things done by them, above set forth, to effectuate the same, during the aforesaid times, knowingly, unlawfully and with intent so to do—

(1) Have signed orders for the purchase of the said products of The Armand Company on the order blanks of that company, on which were set out the aforesaid policy or plan of said company suggesting the resale prices of its said products and that it would

decline to sell to dealers who do not resell them for the same, and have in agreement therewith and in common understanding with each other purchased the said products of The Armand Company.

(2) Have in accordance with the said agreement and common understanding aforesaid resold the said products purchased by them at the said suggested or fixed prices only.

(3) Have in accordance with the said agreement and common understanding aforesaid expressed their intentions, prior to the purchase of the said products, orally and in writing that they would, respectively, resell the said products only at the said suggested or fixed prices in accordance with the said policy or plan of The Armand Company;

(4) Have, as retail dealers and as owners of the said products, in agreement and common understanding with The Armand Company, its officers and agents, sold the said products at retail, only, within their respective stores and have refused to split or divide the same with other dealers for sale by them;

(5) Have, as wholesale dealers and owners of said products, in agreement and common understanding with The Armand Company, its officers and agents, refused to sell any of said products to dealers who were not engaged in the drug business, with unimportant exceptions, to certain other dealers or to certain or any dealers in or within certain prescribed areas, or communities in a State or States or municipality thereof, and in cooperation with The Armand Company, its officers and agents, and at their request have turned over to the said company orders which had been received by them from such other dealers to be rejected or to be filled and the said products sold and delivered for their account by The Armand Company, its officers and agents, at the discretion of the said company in order to prevent those who were not dealers in drugs, with unimportant exceptions, or those who had sold said products at other than the said suggested or fixed prices from purchasing them for resale;

(6) Have made reports to and furnished information to and in cooperation with The Armand Company, its officers and agents, as to the nature of the business of those dealers who desired to purchase said products and of those who had resold the same at prices other than the said prices suggested or fixed by The Armand Company.

(7) Have ceased selling the said products at other than the said suggested or fixed prices at the request of The Armand Company, its officers and agents, and thereafter have sold the same at the said prices.

PAR. 9. The aforesaid acts and things done by respondents, including those referred to and not specifically mentioned as respond-

ents, pursuant to the said unlawful conspiracy, common understanding, combination and agreement not to sell or deliver any of the said products of The Armand Company to any dealer not engaged in the drug business, with unimportant exceptions, or to certain other dealers in such products, or to certain or any other dealers in or within certain prescribed areas or communities in a State or States or municipality thereof, indicated by The Armand Company, its officers and agents, and to fix uniform wholesale and retail prices at which the said products of The Armand Company, when sold by said company, should be resold at wholesale and retail, tended unduly, directly and oppressively to restrain the interstate business, trade and commerce of the respondents and of their competitors and the interstate business, trade and commerce in the said products and to create a monopoly in the sale of the same in The Armand Company and said respondents, including those referred to and not specifically named as respondents, from the producer of the said products to the consumer.

PAR. 10. The above alleged acts and things done by 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.

#### 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-named respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and 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 arguments, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and the conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Armand Company, is a corporation organized in the year 1916 under the laws of the State of

Iowa and having its principal place of business now and at all times since the date of its organization in the city of Des Moines, Iowa.

PAR. 2. Since on or about November 1, 1916, The Armand Company has been continuously and now is engaged in the manufacture, preparation and sale of toilet articles and cosmetics, including face powder and cold cream and other merchandise of similar description, hereinafter referred to as the cosmetic products of The Armand Company.

PAR. 3. The Armand Company causes and, during all the times since on or before November 1, 1919, has caused its said cosmetic products to be packed or wrapped in the packages or wrappers in which they are and have been displayed for sale and sold to the members of the public purchasing them for use or consumption. The packages or wrappers had and still have the word "Armand" printed or displayed thereon, as the trade mark of said company, and The Armand Company causes and, during the said times, has caused the word "Armand" to be used and displayed as part of the name, designation, or description of the content of the said packages or wrappers as, for example, "Armand Cold Cream Powder", "Armand Bouquet Powder", and "Armand Cold Cream Rouge", etc.

PAR. 4. The Armand Company, during all the times mentioned and referred to in paragraph 3 hereof, has sold and now sells its cosmetic products packed or wrapped as above stated to individuals, firms, and corporations throughout the United States, wholesale and retail dealers in such products, including the respondent wholesale and retail dealers.

The Armand Company causes and during said times has caused its cosmetic products, when sold by it to the wholesale and retail dealers above mentioned and referred to, to be transported from without the District of Columbia, packed or wrapped as above described, to the individuals, firms, and corporations above mentioned, and referred to, the purchasers of the products, located in the District of Columbia and in the various States of the United States, other than the State of the origin of the shipment of the products by The Armand Company.

PAR. 5. During all the times since on or before September, 1919, other individuals, firms, and corporations other than The Armand Company and hereinafter referred to as sellers, have been and now are engaged in selling toilet articles, cosmetics, face powders, and similar merchandise, hereinafter called cosmetic products, packed or wrapped in the packages or wrappers in which they are and have

been displayed for sale and sold to the members of the public for use and consumption.

Some of the sellers are and have been manufacturers engaged in the sale of the cosmetic products manufactured by them.

Others of the sellers, including the respondent wholesale dealers above mentioned and referred to, are and have been during said times engaged in the sale of the cosmetic products of the said manufacturers and also in the sale of the cosmetic products of The Armand Company.

The sellers, manufacturers, and others above mentioned, sold their said cosmetic products, manufactured or purchased by them, to individuals, firms, and corporations, wholesale and retail dealers therein, purchasers thereof located in the District of Columbia and in States other than the State of the sellers, respectively, and other than in the State of origin of the shipment of the products to them by the sellers.

The sellers cause and have caused the products when so sold by them, as set forth above, to be transported from their respective States and from without the District of Columbia to the said individuals, firms, and corporations, the said wholesale and retail dealers, and the purchasers thereof.

The Armand Company has been during said times and now is in direct and substantial competition in commerce with the sellers, the above individuals, firms, and corporations.

PAR. 6. The following respondents are corporations organized, respectively, prior to the year 1919 under the laws of the following States and having their usual and principal places of business and doing business as wholesale druggists, respectively, at all times since their organization in the following cities in the said States: Robinson-Pettet Co., in Louisville, Ky.; San Antonio Drug Co., in San Antonio, Tex.; Lamar & Rankin Drug Co., in Atlanta, Ga.; Humiston-Keeling & Co., in Chicago, Ill.; and The McPike Drug Co., in Kansas City, Mo.

PAR. 7. The respondents, A. M. Berry, A. D. Berry, F. S. Berry, W. D. Phillips and M. P. Williams were copartners under the trade name Berry, DeMotive & Co., doing business as wholesale druggists in Nashville, Tenn., prior to March 4, 1925, at which time the said copartnership was dissolved and said respondents ceased to do business as copartners, being succeeded in the wholesale drug business in Nashville, Tenn., by the respondent, Berry, DeMotive & Co., a corporation.

PAR. 8. The following respondents, above named, were organized as corporations, respectively, prior to 1919 under the laws of the



following-named States, having their usual and principal places of business and doing business as wholesale druggists, respectively from the date of their organization until they were dissolved and ceased to do business as hereinafter set forth, in the following-named cities in the said States: Spurlock-Neal Co., in Nashville, Tenn.; Greiner-Kelly Drug Co., and The J. W. Crowdus Drug Co., in Dallas, Tex.; Western Wholesale Drug Co., in Los Angeles, Calif.; Fuller-Morrison Co. and Peter Van Schaack & Sons, in Chicago, Ill.; Faxon-Gallagher Drug Co., in Kansas City, Mo.; and J. S. Merrell Drug Co., in St. Louis, Mo.

The respondent corporation, Berry, DeMoville & Co., was organized on March 4, 1925, under the laws of Tennessee and was engaged in the wholesale drug business with its place of business in Nashville, Tenn., from the time of its organization until it was dissolved as a corporation, as hereinafter stated. The said respondent succeeded and took over and conducted while it existed as a corporation the business formerly conducted under the name Berry, DeMoville & Co., by the copartners mentioned in paragraph 7 hereof, and with the same executive and sales organization and policies that were formerly of the copartnership.

Each and all of the respondent corporations mentioned in this paragraph were dissolved in the year 1929 and have since ceased to do business.

PAR. 9. The respondents above named in paragraph 6 hereof are and have been since their organization as corporations and the respondents mentioned and referred to in paragraphs 7 and 8 hereof, during the times referred to in said paragraphs were separately and severally engaged as wholesale dealers in the wholesale drug business and were competing generally and severally with each other and with other dealers in the same territory in the sale of toilet articles, cosmetics, and similar merchandise packed or wrapped in packages or wrappers in which the said articles and merchandise are and have been displayed and sold to members of the public purchasing the same for use or consumption and which when so sold by the said respondents have been caused by them to be transported from the States of said respondents, respectively, to the purchasers located in various States of the United States other than in the State of origin of the shipments.

PAR. 10. The respondent, The Fair, is and has been since prior to 1919 a corporation organized under the laws of the State of Illinois and having its usual place of business and conducting a retail department store in Chicago, Ill.

The respondent, T. C. Marshall, is an individual doing business as a retail druggist during the times above mentioned in Atlanta, Ga., under the name of Marshall's Pharmacy.

The respondents, Clarence E. Jeffares and Malcolm J. Long, are individuals, copartners doing business as retail druggists in the city of Atlanta, Ga., during the times above mentioned under the trade name of Jeffares-Long Drug Co.

PAR. 11. The respondent, Owl Drug Company, was a corporation organized prior to 1919 under the laws of the State of Missouri and having its usual place of business and doing business as a retail druggist in Kansas City, Mo., from the time of its organization until it was dissolved and ceased to do business as hereinafter set forth. The respondent, E. H. Cone, Inc., was a corporation organized prior to September, 1922, under the laws of the State of Georgia, and having its usual place of business and doing business as a retail druggist in the city of Atlanta, Ga., from the time of its organization until it was dissolved and ceased to do business as hereinafter set forth.

The respondent, Owl Drug Company, was dissolved as a corporation sometime after the month of June, 1925, and the respondent, E. H. Cone, Inc., was dissolved on or about October 15, 1928, and these respondents have ceased business.

PAR. 12. During all the times since on or about November 1, 1919, the respondent, Carl Weeks, is and has been the president, the treasurer and a director, and the respondent, Jessie E. Moore, the secretary and a director of The Armand Company. The respondent, Frank M. Stevens, was a vice president and a director of The Armand Company from on or about the year 1919 to the year 1928, when he resigned as vice president and as director and since 1928 he has not been connected with said respondent. The respondent, Chet V. Gibson, was a vice president and a director of The Armand Company from about the year 1920 until sometime in the year 1926 when he resigned and since then he has not been connected with said respondent.

The respondent, Ralph R. Morris, is and has been during the times above mentioned the agent of The Armand Company in Chicago, Ill., up to the year 1930, when he ceased to be its agent and is no longer connected with The Armand Company. The respondent, Charles A. Bucher, was the agent of The Armand Company in Pittsburgh, Pa., from on or about the year 1919 to the year 1926, when he resigned, and since then he has not been connected with The Armand Company or its business.

PAR. 13. The respondents mentioned in paragraphs 10 and 11 hereof, during the times mentioned and referred to in said para-

graphs, are and have been engaged in the sale at retail to members of the public, consumers, among other things, of toilet articles, cosmetics, face powders, and similar merchandise, packed or wrapped in the packages or wrappers in which they are and have been displayed and sold to members of the public purchasing them for use or consumption, and said respondents have been competing with other dealers located in the same territory in the sale of toilet articles, cosmetics, face powders, and similar merchandise, packed or wrapped as above described.

PAR. 14. The Armand Company during all of the times since on or about November 1, 1919, has advertised and still advertises its products throughout the United States in newspapers and magazines and in this way and by other means, including the distribution of circulars, letters, and free samples of its products among the trade and public has caused a large and substantial demand to be created and to exist for them throughout the United States among the members of the public, the consumers of such products.

PAR. 15. During all of the times since on or about November 1, 1919, by far the greater part of the business in the manufacture and sale of the Armand products is and has been confined to the manufacture and sale of two of the products, namely, the face powders sold under the names, Armand Cold Cream Powder and Armand Bouquet Powder.

In the four years immediately prior to the issuance of the complaint herein by the Commission, from 1921 to 1924, the sales by The Armand Company of those two products alone together averaged annually 85 per centum of the total business of The Armand Company in the sale of its products.

PAR. 16. The demand by members of the trade in such toilet articles to supply the requirements of consumers for the purchase of the products of The Armand Company is and was for more than five years prior to the issuance of the complaint herein large, substantial and extensive throughout the United States.

In the year 1929 The Armand Company, besides its sales to retail dealers, was selling its products to 247 wholesale druggists in the United States.

PAR. 17. On November 1, 1919, The Armand Company adopted a policy of suggesting to dealers the resale prices for its products and made the first public announcement concerning its policy in writing which it published and circulated among the wholesale and retail druggists of the United States.

On the occasion of the first announcement of The Armand Merchandising Policy on November 1, 1919, and at all times since then,

The Armand Company, in announcing and stating the policy to dealers in toilet articles has caused only part of the policy to be expressed in writing. Other parts or conditions of its merchandising policy it caused and still causes to be communicated to the dealers in toilet articles only verbally by its representatives. The part of The Armand Merchandising Policy published in writing is found on its order forms and in trade papers and has been invariably, since November 1919, as follows:

#### THE ARMAND MERCHANDISING POLICY

1. The Armand business is founded and built upon two fundamental principles, to wit: First, highest attainable quality of product, and second, absolute and unquestioned fairness and justice in all relations with customers, both trade and consumer.

2. In the interest of fairness and justice to all concerned, The Armand Company, Inc., suggests fair resale prices for Armand products and declines to sell to dealers who do not charge them. Likewise, the company declines to sell to dealers who effect any other unfair trade practice in merchandising Armand products. Sales once made are, however, absolute and unconditional.

NOTE 1. The Armand Company, Inc., is pleased to include the free goods herein specified as an evidence of its appreciation of the buyer's continued and active interest in the merchandising of Armand products. They are a generous dividend upon a valued investment of good will in the Armand business.

2. The Armand Company, Inc., allows transportation charges, on all shipments upon presentation of the transportation company's receipt.

3. The Armand Company, Inc., makes no consignments. Its goods may be and are ordered for purchase only.

4. All orders are subject to acceptance and confirmation by The Armand Company, Inc., at its principal office in Des Moines, Iowa.

5. This order is accepted in consideration of the promise, hereby made, that should the purchaser at any time desire to sell any or all of his stock of Armand products other than at retail and within his own store or stores, or through a transfer of his entire business, he will first offer to sell them to The Armand Company, Inc., at the original cost to him, and The Armand Company, Inc., will immediately repurchase them.

PAR. 18. The Armand Company since on or about November 1, 1919, has offered its products for sale and sold them to wholesale and retail dealers on the basis of prices per dozen units of each of the products, respectively, at which the various products have been listed by The Armand Company in printed price lists, which have been published and circulated among the wholesale and retail dealers in such products in the United States. The published price lists have been printed during said times on order blanks on which only the part of the Armand merchandising policy, which has been published in writing as set forth in paragraph 17 hereof, was printed.

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The suggested retail prices mentioned in the price lists were and are printed by The Armand Company on the individual packages or wrappers, respectively, in which The Armand Company sold its products to dealers for resale to the consumers.

PAR. 19. A copy of one of the price lists above mentioned is as follows:

ARMAND, *Des Moines*.

Ship, transportation charges allowed:

Dozen	Article	Each	Per dozen
-----	Cold cream powder <sup>1</sup> .....	\$1.00	\$8.00
-----	Bouquet powder <sup>1</sup> .....	.60	4.00
-----	Symphonie compact <sup>1</sup> .....	.60	4.00
-----	Rouge <sup>2</sup> .....	.60	4.00
-----	Rouge refill <sup>2</sup> .....	.25	2.00
-----	Cream rouge <sup>2</sup> .....	.60	4.00
-----	Lip stick <sup>2</sup> .....	.25	2.00
-----	Lip stick <sup>2</sup> .....	.60	4.00
-----	Lip stick <sup>2</sup> .....	1.00	8.00
-----	Double compacts (oxidized silver) <sup>3</sup> .....	1.50	12.00
-----	Compacts refills.....	.50	4.00
-----	Do.....	.25	2.00
-----	Eau de Cologne cleansing cream <sup>4</sup> .....	1.25	10.00
-----	Eau de Cologne cleansing cream <sup>4</sup> .....	.60	4.00
-----	Cold cream (jars) <sup>4</sup> .....	1.25	10.00
-----	Cold cream (jars).....	.50	4.00
-----	Cold cream (tubes).....	.25	2.00
-----	Vanishing cream (jars).....	.50	4.00
-----	Vanishing cream (tubes).....	.25	2.00
-----	Foundation creme.....	1.00	8.00
-----	Skin and tissue cream.....	1.00	8.00
-----	Bath powder.....	1.00	8.00
-----	Talcum powder.....	.25	2.00
-----	Handola.....	.50	4.00
-----	Astringent tonic.....	1.00	8.00
-----	Astringent tonic.....	.50	4.00
-----	Brilliantine.....	per bot.	.50
-----	Beau 'K' perfume (8 oz. bot.).....	per bot.	3.00
-----	Beau 'K' perfume (\$1 bot.).....	per bot.	1.00

<sup>1</sup> 1/4 dozen free with each full dozen.

<sup>2</sup> 1/2 dozen lip and cheek rouge free.

<sup>3</sup> 25% free goods in face powder.

<sup>4</sup> 1 free with each 4.

Total: \$-----

Terms: 30 days net; 2% cash 10 days. \$200 or more, 15%.

Quantity discounts: \$24, 3%; \$48, 5%; \$100, 10%.

Total: \$-----

Dealer's name.....

Town and State.....

This order signed by.....

Armand merchandising policy on back

PAR. 20. The Armand Company sold its products to wholesale dealers at the list prices per dozen units listed in its price lists above mentioned and allowed the wholesale dealers a trade discount of 15 percent and a discount of 2 percent for cash in 10 days, terms net 30 days, and transportation charges allowed to the purchaser.

PAR. 21. The Armand Company in the sale of its products to wholesale dealers offered and delivered to them with the purchase of each full dozen units of the said certain products, referred to in its price lists above mentioned, one fourth dozen units extra of the same products bought by the purchaser, and the wholesale dealers at the suggestion of The Armand Company sold the Armand products to retail dealers at the prices at which they were listed per dozen units in the price lists above mentioned and regularly, in turn, delivered the extra one fourth dozen units to their retail dealer purchaser with each full dozen units of the said products purchased.

PAR. 22. The prices at which The Armand Company has listed and sold its products to dealers and the prices which it has suggested to dealers and caused to be printed on the packages or wrappers as the retail prices per package or unit to consumers have always been the same sums in amount for its various products, respectively.

The prices per dozen units and the suggested retail prices for the Armand Bouquet Powder and the Armand Cold Cream Powder, the sale of which together constituted 85 percent of the total business of The Armand Company in the sale of its products are and have been \$4 and \$8 per dozen units and the suggested retail prices, 50 cents and \$1, respectively.

PAR. 23. Wholesale dealers in cosmetics and toilet articles who engaged in the sale of the Armand products and were unable to purchase such products from The Armand Company, and were obliged to purchase them, if and when they could, elsewhere, and retail dealers who were unable to purchase the Armand products from The Armand Company and purchased them for resale, if and when they could, from the wholesale dealers referred to herein, did not receive with their respective purchases of the Armand products the extra one fourth dozen units above mentioned.

PAR. 24. The Armand Company has made it an unwritten part of its merchandising policy to have the resale of its products confined as far as possible to the wholesale and retail drug trade.

Ninety-one percent approximately of its own total sales of its products were made by The Armand Company to wholesale and retail druggists, represented approximately as follows: 30 percent to wholesale druggists and 61 percent to retail druggists.

The remaining 9 percent of its sales were made by The Armand Company principally to department stores in the larger cities, to general merchants in small towns, in which there was no retail druggist and, since the year 1929, included sales to a large mail-order house and its subsidiary retail general merchandise stores.

Prior to May 22, 1922, The Armand Company sold its products to one wholesale dry goods dealer, but beginning sometime since that date it has sold to wholesale dealers in the drug trade only.

With regard to the resale of its products by wholesale and retail druggists to whom it had sold them, the Armand Company made it an unwritten part of its merchandising policy to suggest and it has suggested to such wholesale dealers that they do not sell the Armand products to department stores.

PAR. 25. Shortly after the announcement of its resale merchandising policy to the wholesale and retail drug trade on November 1, 1919, for a period of two years more or less, beginning about the year 1920, The Armand Company requested its dealers and other dealers who wished to buy its products, individually and separately, directly and through its salesmen, to make to it a written and signed declaration of intention as to the manner in which they intended to resell The Armand Company's products bought by them, and The Armand Company sent to the dealers and submitted to them a model form of declaration of intention to be signed by the dealer and returned to The Armand Company.

PAR. 26. A copy of the declaration of intention, mentioned in paragraph 25 hereof, sent to wholesale and retail dealers, is as follows:

THE ARMAND COMPANY,

*Des Moines, Iowa.*

GENTLEMEN: The undersigned wishes to freely and voluntarily make the following declaration of intentions, which is not, and does not constitute an obligation or agreement, express or implied.

Recognizing your right to decline the sale of your products to dealers who do not charge the fair resale prices suggested by you, we declare it to be our intention to observe the fair resale prices suggested by you.

We further wish to state that we intend to retail this entire purchase within our own store and not otherwise. We do not intend to split or divide same with any other dealer. The possession of these goods, identified by mark, by other dealers, will be evidence that purchase was split.

Should we desire to dispose of these goods, in any other manner than at retail within our own store, it is our intention to first offer them to you at the original cost to us.

Yours truly,

PAR. 27. The Armand Company during the time referred to in paragraph 25 secured signed declarations of intentions in the form set out in paragraph 26 hereof and also during the same period of time directed its salesmen to secure and it secured through them written and oral declarations of intentions, from dealers to whom it sold its products, in the following form:

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## DECLARATION OF INTENTION

The undersigned hereby declare that they intend to resell the within order of merchandise at the fair resale prices suggested by The Armand Company. This declaration is not purposed to be, is not, and is not to be construed as, an agreement, expressed or implied and imposes no obligation whatsoever.

To be signed by buying firm \* \* \*.

In its circular letter, numbered 103, which The Armand Company wrote to its salesmen on August 18, 1920, instructing them as above set forth, was the following paragraph containing a reference to the last mentioned form of declaration of dealers' intentions:

5. You may lawfully inquire, prior to sale, whether a dealer intends to resell at the fair resale prices suggested by the company. You may lawfully suggest that a dealer write the following declaration of his intention upon the order form; to wit (here follows the above form of declaration of intention).

During the same period of time that it was directing its salesmen to secure declarations of intention from dealers as above set forth, The Armand Company, on the other hand, instructed them that it was unlawful to effect any agreement with dealers whether by word of mouth, or written and implied from the attending circumstances, whereby resale prices are fixed and maintained; that an unlawful, implied agreement might arise if the salesmen asked a dealer to give assurance that he would maintain the suggested resale prices fixed by The Armand Company, or if the salesmen stated to a dealer that The Armand Company would sell its products to him only if he would maintain the suggested fixed resale prices.

PAR. 28. It is and has been the practice of The Armand Company during all the times since the year 1919 frequently from time to time to publish the part of its merchandising policy set forth in paragraph 25 hereof to the wholesale and retail dealers in the drug trade which included the declaration to the effect that The Armand Company declined to sell to dealers who do not charge the resale prices suggested by it, and it was also the practice of The Armand Company to inform the particular dealers from whom it requested a signed declaration of intention during the period above mentioned, as set forth above, that upon receipt of a satisfactory declaration of the dealer's intention his order for Armand products would have The Armand Company's most prompt and interested attention.

PAR. 29. The president of Robert Stevenson & Co., a corporation which was doing business in Chicago as a wholesale druggist, testified that his company was engaged in the sale of the Armand products and that there was a time when The Armand Company did not fill his company's orders; that they wrote The Armand Company to find out why they did not fill them and that a letter was received



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from The Armand Company on June 29, 1921, following the above inquiry from Robert Stevenson & Co.

The letter from The Armand Company to Robert Stevenson & Co. of June 29, 1921, is as follows:

**GENTLEMEN:** On June 4th, we declared our merchandising intentions, and advised that we would accept no further orders from any jobber who failed to supply us with a declaration of his intentions, which was satisfactory to us.

If you anticipate ordering Armand goods any time in the future, it might be well for you to reply to our letter, as no attention would be paid to orders except as we can refer to a satisfactory response to our registered letter of June 4th.

Copy of June 4th letter enclosed.

The following is a copy of the letter of June 4th, which was enclosed with letter of The Armand Company of June 29, 1921, to Robert Stevenson & Co.:

We submit for your information the following declaration of our merchandising intention:

We will not accept business from, nor recognize as a jobber of Armand products, any dealer who in reselling allows either more than 2% discount in quantities amounting to \$24 and less or more than 5% discount in quantities amounting to \$24 and more. Likewise, we will not accept business from any other dealers who do not charge the fair resale prices suggested by us.

The Armand Company does not request or effect any agreements, whether express or implied, with its dealers, relating to resale prices. Buyers are entirely free to resell as they please. But, The Armand Company will exercise its constitutional right to decline sales to any dealer who either does not charge the fair resale prices suggested by it or resells to other dealers who do not charge such prices.

Very truly yours,

THE ARMAND COMPANY,  
By \_\_\_\_\_,  
*President.*

**UNDER NO CIRCUMSTANCE WILL ANY FURTHER OR OTHER ORDER BE ACCEPTED BY US FROM YOUR HOUSE UNTIL WE RECEIVE AN ACKNOWLEDGMENT OF THIS LETTER, WITH A STATEMENT OF YOUR PRESENT INTENTIONS, OR A CONFIRMATION OF THE DECLARATION THAT YOU PREVIOUSLY VOLUNTEERED.**

You understand that we recognize your right to sell your present and any future stock of Armand Powder that you may own, at any price you please, and offer any discount you choose.

We ask you in turn to recognize our right to refuse to sell you if you give greater discounts than 2% in less than \$24 quantities, or if you give greater discounts than 5% in quantities of \$24 and over.

Paragraph one gives the Law for your side, and Paragraph three gives it for us. **WE INTEND TO TAKE FULL ADVANTAGE OF THE LAW ON OUR SIDE, WHICH PERMITS US TO REFUSE TO SELL ANYONE WHO IGNORES OUR PUBLISHED AND SUGGESTED FAIR JOBBING DISCOUNTS.**

Sincerely,

THE ARMAND COMPANY.

(Capitals same as in original.)

PAR. 30. Following the inquiry of Robert Stevenson & Co. made to The Armand Company and the reply of The Armand Company set forth in paragraph 29 above, Robert Stevenson & Co. signed the declaration of intention, which was requested of them by The Armand Company as to their intentions in the resale of Armand products, to the effect that they intended to resell at the suggested resale prices and thereafter The Armand Company filled their orders and sold them the Armand products.

PAR. 31. The Stewart & Holmes Drug Co. is a wholesale druggist in Seattle, Wash., and the only wholesale druggist in Seattle handling complete lines of goods. Its selling territory extends over the entire Northwest, including Idaho, and their retail dealer customers in general drug merchandise alone, excluding other retail dealer customers, number around eight hundred. Its gross sales of merchandise are annually about \$4,500,000.

The Stewart & Holmes Drug Co. buys annually about \$15,000 worth of Armand products from The Armand Company. In the first half of the year 1922 and prior to 1922 for several years Stewart & Holmes were regularly buying the Armand products from The Armand Company. At some time in 1922 Stewart & Holmes sold the Armand goods to a retail dealer who operated a cut-rate drug store in Yakima, Wash., and that incident caused an argument between Stewart & Holmes and the representative of The Armand Company which resulted in the refusal by The Armand Company to sell Armand products to Stewart & Holmes for a period of about six months or more beginning in 1922.

During the period in which Stewart & Holmes were unable to buy from The Armand Company, the latter company wrote a letter to Stewart & Holmes, on November 24, 1922, in which, among other things, was the following:

So far as I know your house has never yet given us a friendly hearing in the course of which you had from us a full statement of the Armand merchandising policy. It is my intention that you shall have another such opportunity if you care to avail yourselves of it when Gibson makes his next trip west.

It might be that after such an interview you would not care to handle Armand any more. It is possible that we might decide we did not wish to sell you, and it is altogether likely that after such an interview we may both desire to do business each with the other to our mutual satisfaction and advantage for the years to come.

About thirty to sixty days after the receipt of the above letter by Stewart & Holmes, Mr. Chet V. Gibson, the sales manager for The Armand Company who was referred to in the letter met in Seattle, Mr. Schrader, who had absolute charge of the buying of toilet goods

for Stewart & Holmes and they discussed the question of the resumption of the buying of Armand products from The Armand Company by Stewart & Holmes.

Stewart & Holmes had been accustomed to receiving communications frequently from The Armand Company stating their sales policy, as it is printed on The Armand Company's order forms, but at the above interview with Mr. Schrader, Mr. Gibson stated the whole Armand merchandising policy to Mr. Schrader and demanded that Stewart & Holmes agree to do certain things, if they wanted to buy again from The Armand Company. He told Mr. Schrader that The Armand Company wanted Stewart & Holmes not to sell more than one dozen at a time of an item of Armand products to a retail dealer and explained that the reason was that The Armand Company was afraid, if a larger quantity was shipped, the retail dealer would use them for sale purposes, and Mr. Gibson also explained that limiting the sale to only one dozen was to prevent the person or store from having such a quantity that they would be able to sell to price cutters or to others who could not otherwise get them; that The Armand Company wanted Stewart & Holmes not to sell to department stores because The Armand Company desired their own salesmen to call on department stores and thereby obtain from them larger orders than Stewart & Holmes would be able to get for Armand products; that The Armand Company wanted Stewart & Holmes not to sell to beauty parlors and not to sell to any general merchandise store in a town where there was a drug store, because they wanted to keep the merchandise in the hands of the retail drug trade; that if there was no retail druggist, Stewart & Holmes could sell a general merchandise store; and Mr. Gibson said if Stewart & Holmes would live up to those things, that The Armand Company would again sell them the Armand products.

When Mr. Gibson made the above statement to Mr. Schrader the latter informed Mr. Gibson that Stewart & Holmes Drug Co. would live up to those things that Mr. Gibson had demanded with respect to the resale of the Armand products by Stewart & Holmes, and he gave an order to Mr. Gibson for Armand products which was accepted by Mr. Gibson.

PAR. 32. The Stewart & Holmes Drug Co. during all the times prior to and since 1922 has sold and now sells the toilet goods, face powders, etc., manufactured by Coty, Houbigant, and other competitors of The Armand Company to any retail distributor, regardless of the nature of the distributor's business, and without inquiring at what price the distributor has resold such products or at what

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prices the distributor intends to resell them. Stewart & Holmes have sold the products of the said competitors to department stores, among other purchasers. It is and it has been the policy of Stewart & Holmes to sell toilet goods of all kinds to department stores, except the Armand products since it resumed buying from The Armand Company, as above set forth.

After Mr. Schrader made the agreement with The Armand Company through Mr. Gibson to sell the Armand products in accordance with the demands of The Armand Company above mentioned, and Stewart & Holmes were reinstated as direct buyers from The Armand Company, he instructed the sales manager of Stewart & Holmes that they were not to sell Armand products to department stores and the sales manager instructed the sales force not to sell the Armand products to department stores, and since that time Stewart & Holmes have not sold the Armand products to department stores or to any retail dealers in toilet goods except retail druggists, excepting in small towns where there is no retail druggist, in which cases Stewart & Holmes sells Armand products to general merchandise stores. Since said agreement with The Armand Company, Stewart & Holmes have not sold the Armand products to any retail dealer in quantities of more than one dozen of any one item, excepting in a few instances to certain retail dealers in Alaska, and they have not knowingly sold the Armand products to any dealer who would cut the suggested retail prices of The Armand Company.

In order to prevent the sale of the Armand products to retail dealer price cutters after the said agreement with Mr. Gibson, Mr. Schrader informed the order department of Stewart & Holmes, which checks out the merchandise, to guard against it and for that purpose Stewart & Holmes keep a record of legitimate drug dealers in the Pacific Northwest to whom they sell the Armand products and also keep a list of the dealers to whom they do not wish to sell the Armand products and they look up those lists before they fill an order and if they find on the list a price-cutter, a department store, or some store other than a drug store they stop the order and mark the item "temporarily out."

Ever since the Stewart & Holmes Drug Co. made the said agreement with The Armand Company and were reinstated on the direct buying list of The Armand Company, they have been buying the Armand products from The Armand Company on the above agreement and understanding.

PAR. 33. Katz Brothers Drug Co. and the Katz Drug Co. were separate cut-price retail drug stores in Kansas City, Mo., conducted as separate organizations prior to 1926 by two brothers named Katz,

who have merged their separate businesses and conducted what was notoriously a cut-price retail drug store since about the year 1926 under the name Katz Drug Co.

In 1921 and 1922 the Katz Drug Co. and Katz Brothers Drug Co. were selling Armand products at the retail prices suggested by The Armand Company. On or about September, 1922, Katz Brothers Drug Co. and the Katz Drug Co. sold the Armand products at other than the retail prices suggested by The Armand Company. The Armand Company was advised by its representatives of these sales at cut prices and thereafter cut off Katz Brothers Drug Co. and the Katz Drug Co. from buying the Armand products from it.

PAR. 34. After The Armand Company cut off the Katz Drug Co. and Katz Brothers Drug Co. from buying direct from it, in September, 1922, The Armand Company "drew a ring" around Kansas City, Mo., and for a certain period of time directed the McPike Drug Co., wholesale druggists in Kansas City, Mo., and a respondent named herein, not to fill orders from retail dealers in Kansas City out of their stock on hand, but to send such orders direct to The Armand Company for attention, in order to prevent Armand products ordered and purchased by said retail dealers being sold by the retail dealer purchasers to Katz Brothers Drug Co., or to the Katz Drug Co., and the said wholesale dealers sent orders received by them from retail dealers in Kansas City to The Armand Company, and did not fill the orders out of the stock they had on hand.

The Katz Brothers Drug Co. were cut off The Armand Company's buying list in September, 1922, and in 1925 after they were off the direct buying list for two or more years, the president of The Armand Company called to see Mr. Katz, and three months after that interview the Katz Brothers Drug Co. resumed buying direct from The Armand Company and they have since then sold the Armand products at the suggested prices of The Armand Company.

PAR. 35. Fuller-Morrison & Co., wholesale druggists of Chicago and a respondent named herein was selling the Armand products in 1922. They were at a previous time cut off from buying direct from The Armand Company. A witness, who was the buyer of Fuller-Morrison & Co. in 1922, testified that he remembered an order from Carson, Pirie, Scott & Co., a Chicago department store, covering a number of items, including some items of Armand products and that Fuller-Morrison wrote and sent a letter to The Armand Company on September 28, 1922, regarding the omission of the Armand products in filling the order, as follows:

GENTLEMEN: Carson, Pirie, Scott & Company recently included in their regular drug order several items of your manufacture which were omitted, believing

that you did not care to have us supply Armand goods on their orders. They seem somewhat peeved about this and do not understand why we will not supply them.

Are we doing the right thing in refusing to sell them Armand goods?

Very truly yours,

On or about May 7, 1923, Mr. J. W. Morrison, president of Fuller-Morrison Co. of Chicago, in an interview with a representative of the Federal Trade Commission, stated he believed The Armand Company had gone too far with their policy in respect of retail price maintenance because they had instructed Fuller-Morrison not to sell cosmetics to Carson, Pirie, Scott & Co., one of their good customers; that The Armand Company did not instruct him that way directly but that they gave him to understand if he did sell them he would be cut off; that it was against the policy of The Armand Company for jobbers to sell to department stores, the department stores being price cutters and that that was a material factor with The Armand Company's not allowing Fuller-Morrison to sell Carson, Pirie, Scott; that Carson, Pirie, Scott were price cutters.

PAR. 36. Sears, Roebuck & Co., of Chicago, have conducted a retail mail-order business throughout the United States for 35 years and during the last four years or more have operated large retail stores in various cities. In 1929 they had 45 to 50 such retail stores in the larger cities.

In 1925 Sears, Roebuck were selling the cosmetic lines of various manufacturers of such toilet goods but were not selling the Armand products. The Armand products were catalogued in their mail-order business in the fall of 1926 and at that time the Armand Cold Cream Powder, the suggested retail price of which was \$1 was listed at 83 cents plus delivery charges and the Armand Bouquet Powder, the suggested price of which was 50 cents was listed at 42 cents plus delivery charges.

In 1926 while the said Armand products were listed at the above prices in Sears, Roebuck's mail-order catalog and sold by them, they were also being sold by Sears, Roebuck in their retail stores at the prices of 83 cents and 42 cents, respectively, with no charge for delivery.

In the spring catalog of 1927 Sears, Roebuck listed the said products at 89 cents and 45 cents plus delivery charges.

While the said products were being listed and sold at the above prices, Sears, Roebuck were not buying them from The Armand Company. The Armand Company refused to sell to Sears, Roebuck & Co.

In their mail-order catalog for the fall and winter of 1927 and in the spring catalog of 1928, Sears, Roebuck did not list the said products, because they were not able to buy the products direct from The Armand Company and buying them elsewhere had to pay a higher price which took away the profit from their sale and made it inadvisable to list the products for sale, although Sears, Roebuck had sufficient demand for the sale of the products.

From 1925 to a short time prior to the issuance of the Sears, Roebuck mail-order catalog for the spring and fall of 1927, the buyer of the toilet goods for Sears, Roebuck had frequent visits from the president of The Armand Company, and conversations with him over the telephone during which the taking on of the Armand line by Sears, Roebuck was discussed between them and following those interviews and discussions the representatives of Sears, Roebuck on or about April 27, 1927, decided to put the said products on sale in Sears, Roebuck's retail stores at the suggested retail prices of The Armand Company and on and after about April 27, 1927, to the present time those products have been sold in the Sears, Roebuck retail stores at the prices suggested by The Armand Company for their sale at retail to the consumer.

On April 27, 1927, Sears, Roebuck made their first purchase of Armand products from The Armand Company and they have since said time continued to purchase them from The Armand Company for the account of their retail stores.

The buyer for Sears, Roebuck testified that in his talk with the president of The Armand Company, immediately prior to the time when he ordered the Armand products direct from The Armand Company for the retail stores, he consented to sell the products in the retail stores at the suggested prices of The Armand Company, and at that time he further testified that the president of The Armand Company stated that he would fill the order of Sears, Roebuck for the retail stores and that Sears, Roebuck raised its prices for the products in their retail stores to the prices suggested by The Armand Company, but did not raise its prices in the retail stores prior to his talk with the president of The Armand Company.

The spring catalog of Sears, Roebuck is gotten out in the preceding January and in the catalog for the spring of 1927 the Armand products were listed, as above stated, at 89 cents and 45 cents plus delivery charges.

The president of The Armand Company, had objected to the listing of the Armand products in the Sears, Roebuck catalog in his discussions with the Sears, Roebuck buyer and at or about the time

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when Sears, Roebuck placed their first order with The Armand Company for its products, on April 27, 1927, stated to the buyer that he would not sell the Armand products to Sears, Roebuck for the account of their mail-order business while they were listed at the prices above set forth, but that he would sell them to Sears, Roebuck for the account of their retail stores if the accounts of the mail-order business and the retail stores could be kept separately and thereupon Sears, Roebuck purchased the products as above stated for the account of their retail stores, but did not purchase them for the account of their mail-order business.

Following the purchase of the Armand products for the retail stores on April 27, 1927, the products were not listed by Sears, Roebuck in their mail-order catalog for the fall of 1927 and Sears, Roebuck discontinued listing them in its mail-order catalogs until the fall catalog of 1928.

In the fall catalog for 1928 the said Armand products were listed at 83 cents and 39 cents, respectively, plus delivery charges, and the Armand products for the account of the mail-order business were purchased elsewhere and not from The Armand Company. In a later catalog the said Armand products were listed at 95 cents and 45 cents, respectively.

The president of The Armand Company objected to the listing at the prices of 95 cents and 45 cents and after a discussion between him and the buyer for Sears, Roebuck, who explained that a customer ordering by mail remitted the price of 95 cents or 45 cents by money order at a cost of 3 cents for a money order and paying 2 cents for postage, actually paid \$1 and 50 cents for the products, respectively, The Armand Company in 1929 began to sell Sears, Roebuck for the account of their mail-order business and the Armand products continue to be listed in Sears, Roebuck catalog at 95 cents and 45 cents, respectively.

During the time Sears, Roebuck were unable to purchase from The Armand Company and purchased Armand products elsewhere they had to pay their seller a profit which made the prices of the products in excess of the prices at which they were bought from The Armand Company, and at times Sears, Roebuck were unable to purchase the products in quantities sufficient for the demands of their trade and were able to fill only about 60 percent of their orders for Armand products.

During all the times above mentioned and referred to the policy of The Armand Company as to the sale of its products at its suggested retail prices was known by Sears, Roebuck and by the trade generally.



PAR. 37. J. Bacon & Sons conduct a large dry goods department store in Louisville, Ky., and have been in business since 1846. They were selling the Armand products. About the year 1920 they published an advertisement offering the Armand products at prices lower than those suggested by The Armand Company. Following this advertisement, The Armand Company wrote Bacon & Sons a letter regarding the advertisement, in consequence of which Bacon & Sons stopped buying and selling the Armand products.

After J. Bacon & Sons discontinued the sale of Armand products the salesman of The Armand Company was in the habit of coming in to see them and from time to time discussed at length their resumption of buying the products. In 1924, Bacon & Sons finally told the Armand salesman to go ahead and ship the products. The Armand salesman then asked them if they would agree to sell the Armand products at the prices suggested by The Armand Company to which Bacon & Sons agreed and gave The Armand Company an order for the products and J. Bacon & Sons have since 1924 sold Armand products at the suggested resale prices.

J. Bacon & Sons can sell The Armand Cold Cream Powder, the suggested retail price of which is \$1, at 79 cents and get a profit of 40 percent, and they have sold the products of competitors of The Armand Company at less than their suggested resale prices, and have never been threatened by them to be cut off from buying their products but The Armand Company's salesman told them if they sold Armand products at less than the suggested prices, they would be cut off from buying Armand products from The Armand Company.

PAR. 38. Borum Brothers are wholesale druggists in Los Angeles, Calif. Prior to about February 11, 1929, R. C. Miner was, for about the four years immediately preceding said date, their credit manager and was also formerly their sales manager besides. Several years before 1929 Borum Brothers had been on the direct buying list of The Armand Company and had been taken off the list and The Armand Company had refused to sell to them.

About the fall of 1928 a representative of The Armand Company called on Borum Brothers and told their buyer The Armand Company would sell them direct if they would maintain the prices and Borum Brothers and their buyer knew at that time that The Armand Company had a strict resale price policy in effect.

About three months or more prior to February 19, 1929, they were again placed on the direct buying list of The Armand Company and since that time bought Armand products from The Armand Company.

R. C. Miner, above mentioned, began to operate a retail cut price drug store in Los Angeles shortly prior to February 11, 1929, known

as The Thrifty Cut Rate Store and he admitted that when he started in business he was financed to some extent by Borum Brothers.

R. C. Miner, prior to July 16, 1929, sold the Armand products at cut prices, and he was generally known as a price cutter. Since about July 16, 1929, after an interview with a representative of The Armand Company he has been buying from The Armand Company direct and selling the product at the suggested prices of The Armand Company.

On and after February 11, 1929, while Mr. Miner was selling Armand products at cut prices he was buying them from a jobber. At first he refused to tell the name of the jobber, saying that it would do injury to the witness to name him. He finally said the jobber was Borum Brothers and that Borum Brothers were buying direct from The Armand Company. After R. C. Miner admitted in this proceeding that he was financed by Borum Brothers, Norman Levin, the buyer for Borum Brothers, was called to testify and on being asked if Borum Brothers had financed R. C. Miner in his business refused to answer, saying that to answer the question would hurt Borum Brothers very materially.

Arthur Braunstein has been conducting a retail cut-rate drug store in Los Angeles since August, 1928, and selling toilet goods made by The Armand Company and other manufacturers. He sells the Armand products at cut prices and first bought the Armand products from Borum Brothers and from the J. K. Hornbein Co., of Los Angeles. The J. K. Hornbein Co., wholesale druggists, cannot buy from The Armand Company, but buys the Armand products if and where they can buy them. Everything Braunstein bought from Hornbein was shipped to him in his own name and everything he bought from Borum Brothers was shipped to him in some fictitious name but not in that way at his request or by his consent, and he accepted them under the fictitious name from Borum Brothers because he knew it was done for the reason that he was selling at cut prices.

The Smile Store, a cut-rate drug store in Los Angeles sells toilet goods of various manufacturers, including the Armand products and buys the Armand products from J. K. Hornbein Co. and from Borum Brothers, of Los Angeles. When The Smile Store buys the Armand products from Borum Brothers they are billed to it under fictitious names and this manner of billing covers all the goods bought from Borum Brothers, including the Armand products, under an agreement concerning all the goods that might cause any controversy between Borum Brothers and the different manufacturers, such as The Armand Company, that suggest a regular price for the sale of their goods.

PAR. 39. The practices of The Armand Company in asking and obtaining from purchasers or prospective purchasers of its products written declarations of their intentions, signed by the purchasers in the forms set forth in paragraphs 26 and 27 hereof, with respect to the sale of the Armand products, was abandoned by The Armand Company on or about July 1, 1922, and purchasers who had previously signed such declarations were thereafter notified by The Armand Company that such declarations then outstanding were null and void.

PAR. 40. The declarations of intention, mentioned and referred to in paragraphs 25 to 30, inclusive, and 39 hereof, signed by purchasers and returned by them to The Armand Company and the declarations of intention to the same effect made orally to The Armand Company's agents and employees at the solicitation of the latter, constituted and they were agreements with The Armand Company on the part of such dealers, who were many in number, to sell the Armand products bought from The Armand Company in each and every subsequent transaction, in accordance with such declarations, and among other things to sell them at the prices suggested by The Armand Company. Said agreements were in force and effect approximately two and a half years, from early in the year 1920 to on or about July 1, 1922.

PAR. 41. The purchasing of Armand products from The Armand Company by Fuller-Morrison & Co., wholesale druggists of Chicago, during the years 1922 and 1923, was made under the agreement or understanding referred to in paragraph 35 hereof, between Fuller-Morrison & Co., and The Armand Company, whereby Fuller-Morrison & Co. in consideration of the sale of Armand products to them by The Armand Company, agreed with The Armand Company to refuse and they did refuse to resell the Armand products to retail department stores and to retail stores, who in reselling the products did not charge the fixed retail prices to consumers which were suggested by The Armand Company.

PAR. 42. On or about January 24, 1923, The Armand Company caused the Stewart & Holmes Drug Co. of Seattle, Wash., to enter into an agreement or understanding with it, as set forth in paragraphs 31 and 32 hereof and which is still in effect, whereby the Stewart & Holmes Drug Co. have, among other things, agreed not to sell the Armand products bought by them to retail dealers who resell Armand products at less than the fixed prices suggested by The Armand Company, and in consequence and in pursuance of said agreement and in cooperation with The Armand Company in maintaining fixed resale prices on Armand products, the Stewart &

Holmes Drug Co. as a means of insuring that they or their employees will not sell the Armand products to price cutters, among other things, keep and have kept a list of those retail dealers in their sales territory known as price cutters to whom they have refused since said agreement and still refuse to sell the Armand products because they are price cutters and sell Armand products at prices less than the fixed prices suggested by The Armand Company for their resale.

PAR. 43. In the year 1924 The Armand Company entered into an agreement as set forth in paragraph 37 hereof, with the firm of J. Bacon & Sons of Louisville, Ky., retail dry goods dealers, whereby it was agreed that The Armand Company would thereafter sell its products to Bacon & Sons and that the latter firm would resell them to consumers at the suggested prices fixed for their resale by The Armand Company, and the said agreement has been in full force and effect at all times since the year 1924.

PAR. 44. In 1925 The Armand Company entered into an agreement with the Katz Brothers Drug Co. and have continued the said agreement since 1926 with the Katz Drug Co. successors of the Katz Brothers Drug Co. as set forth in paragraphs 33 and 34 hereof, whereby the Katz Drug Co. and its predecessors have since sold the Armand products at the suggested prices fixed by The Armand Company and were restored to The Armand Company's list of direct buyers.

PAR. 45. On or about April 27, 1927, The Armand Company made an agreement as set forth in paragraph 36 hereof, with Sears, Roebuck & Co. of Chicago, Ill., whereby it sold its products to the latter company for resale at the suggested, fixed prices of The Armand Company, in the retail stores of Sears, Roebuck & Co., and in 1929 made another agreement with Sears, Roebuck & Co. whereby it agreed to sell its products direct to Sears, Roebuck & Co. for the account of their sale in the mail-order business of the latter company on the understanding that the Armand products would be resold in the said mail-order business at prices which were substantially the suggested prices fixed for their resale by The Armand Company. The foregoing agreements between The Armand Company and Sears, Roebuck & Co. have since said dates been in full force and effect.

PAR. 46. On or about the last part of the year 1928 or the early part of the year 1929, The Armand Company entered into an agreement or understanding with Borum Brothers, wholesale druggists of Los Angeles, Calif., as set forth in paragraph 38 hereof, whereby

The Armand Company reinstated Borum Brothers on its direct list of purchasers and agreed to sell the Armand products to them thereafter, and Borum Brothers agreed to sell the Armand products at the said suggested fixed prices of The Armand Company.

PAR. 47. The Armand Company systematically represented to its wholesale and retail dealer purchasers and prospective purchasers that it would refuse further sales to those who cut its suggested fixed resale prices and it did accordingly refuse further sales when it decided it was necessary for the carrying out of its merchandising policy which had for its chief objective the maintaining of the wholesale and resale fixed prices suggested by it for its products.

PAR. 48. The direct effect and result of the above acts and practices of The Armand Company have been and now are to suppress competition among wholesalers and between retail dealers in the distribution and sale of The Armand Company products; to constrain wholesalers and retail dealers to sell said products at the wholesale and retail dealer prices fixed by The Armand Company; and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said products under methods of free competition.

#### CONCLUSION

The practices of the said Armand company under the conditions and circumstances described in the foregoing findings are to the prejudice and injury of wholesale and retail dealers and are to the prejudice and injury of the public and are unfair methods of competition in commerce and constitute a 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 OF DISMISSAL AND TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, answer of respondents, testimony and evidence introduced, and briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent, The Armand Company, Inc., 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",

## Order

17 F.T.C.

*It is now ordered,* That respondent, The Armand Company, Inc., its officers, agents, representatives, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Entering into or procuring either directly or indirectly from wholesale or retail dealers contracts, agreements, understandings, promises or assurances that respondent's products, or any of them, are to be resold by such wholesale or retail dealers at prices specified or fixed by The Armand Company, Inc.

(2) Entering into or procuring either directly or indirectly from wholesale dealers contracts, agreements, understandings, promises, or assurances that Armand products are not to be resold by such wholesalers to price-cutting retail dealers.

*It is further ordered,* That the respondent, The Armand Company, Inc., shall, within 30 days after the service of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order to cease and desist.

*It is further ordered,* That this proceeding be, and the same hereby is dismissed as to all the respondents above named, excepting The Armand Company, Inc., its officers, agents, representatives, and employees.<sup>2</sup>

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<sup>2</sup> For list of respondents, see *supra*, page 218.

## Order

IN THE MATTER OF  
MADISON MILLS, INCORPORATEDMODIFIED ORDER TO CEASE AND DESIST<sup>1</sup>*Docket 1776. January 31, 1933*

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence, 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", and the Commission having heretofore, to wit, on December 14, 1931, entered and served its order upon respondent requiring it to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that paragraph 3 of the said order should be rescinded,

*It is now ordered*, That paragraph 3 of the cease and desist order heretofore issued in this proceeding on the 14th of December, 1931, be and the same is hereby rescinded.

<sup>1</sup>The complaint, findings, and original order in this matter, relating to respondent's practices of shipping shirts different in designs, patterns, etc., from those ordered, c.o.d. without privilege of inspection, and without giving customer notice of exhaustion of stock of particular garment ordered and opportunity for further selection; of falsely and misleadingly representing that dissatisfied customer's money would be returned "at once, without question"; and of making unwarranted and misleading use of such words as "Mills", "Shirt Manufacturers", etc., are reported in 15 F.T.C. 375 et seq.

The original order (omitting the usual formal demand for report of compliance within a specified period) required respondent, its agents and employees, in connection with the advertisements, sale or distribution by it in interstate commerce of shirts, to 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.

(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.

## IN THE MATTER OF

## RICHARD A. O'BRIEN, TRADING AS O'BRIEN &amp; CO.

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

*Docket 2083. Complaint, Dec. 16, 1932—Order, Feb. 7, 1933*

Consent order requiring respondent individual, in connection with sale and offer of his so-called "P.H. Powder" in interstate commerce, to cease and desist from representing in his advertisements or otherwise, that said powder is effective to rid animals of worms, or is an animal conditioner, cures or prevents distemper or has been proved by experience so to do, or cures or prevents certain other ailments, or has certain tonic and fortifying effects, as in said order set forth and specified.

*Mr. Alfred M. Craven* 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 Richard A. O'Brien, trading as O'Brien & Co., hereinafter referred to as the respondent, 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 in that respect as follows:

PARAGRAPH 1. Respondent, Richard A. O'Brien, is engaged at Seattle, Wash., in the business of selling to the trade and to the public generally, a preparation intended for, and used as, a conditioner, tonic and medicine for animals, particularly fur-bearing animals, said preparation being generally known in the trade and to the public as "P.H." Powder—and in the shipment thereof in interstate commerce from his principal place of business in Seattle, Wash., to the purchasers thereof located in Alaska and in various States of the United States other than the State of Washington. In the course and conduct of his said business, respondent is and has been in competition with other individuals, partnerships, and corporations located in the United States, engaged in the sale and distribution in interstate commerce of stock powders and medicines which are used for the same purposes as those for which respondent's said powder is used.



PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting orders for and selling said "P.H." Powder, causes advertisements and advertising matter to be inserted in magazines of national circulation, wherein such statements as the following appear:

Get rid of worms without pilling. "P.H." Powder will do it. \* \* \* World's Greatest Animal Conditioner and Worm Expeller. Given to the Animal with its Food. \* \* \* It also Cures and Prevents Distemper. \* \* \* Worms are blood-sucking parasites that cause 90% of all livestock losses. "P.H." Powder will get them. It will also give keener appetites. It will enrich their blood and will fortify their systems against infectious diseases. \* \* \* It will cure and prevent coccidiosis, snuffles and disease. \* \* \* It acts as a tonic, fights the worms and fortifies the animal system against infectious diseases.

Respondent, in further promotion of his said business and in the sale of said powder, distributes in interstate commerce among his customers and prospective customers, circulars, leaflets, and other advertising matter, and makes therein, among other claims and representations, the following:

"P.H." for the cure of worms and perfect health and condition in dogs, or all fur-bearing animals. \* \* \* "P.H." is a beneficial tonic and conditioner and will eliminate all intestinal parasites and digestive disturbances in its food. "P.H." stimulates the appetite, enriches the blood, thereby fortifying the system against worms and infectious diseases, such as colds, distemper, ear canker, mange, etc. "P.H." is a proved specific for coughs or parasitic bronchitis. \* \* \* "P.H." will cure and prevent distemper and diseases. \* \* \* "P.H." has been thoroughly tested and experiments made with it by qualified British chemists for the cure and prevention of distemper and claims were only made for it when it had been proven beyond a doubt that it would effect a cure and prevent the disease. \* \* \*

Respondent, both in his magazine advertising and in his circulars, leaflets, and similar advertisements, makes other claims and representations in effect the same as the claims and representations quoted in this paragraph.

PAR. 3. Said claims and representations are, all and singular, false and misleading, in that the said powder, administered to animals as directed by the respondent or otherwise, is not effectual to prevent, remedy or cure any of the diseases mentioned, or to bring about the results claimed in such representations and advertising matter, or any of them.

PAR. 4. The various claims and representations set forth in paragraph 3 hereof, all and singular, have the tendency and capacity to mislead and deceive purchasers and to induce the purchase by them of said powder in and on account of their belief in the truth of said claims and statements, and thus to divert trade from respondent's competitors to the respondent, to the injury of said competitors.

## 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" (38 Stats. 719), the Federal Trade Commission, on the 16th day of December, 1932, issued and thereafter served its complaint against the respondent Richard A. O'Brien, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent thereafter filed an answer to said complaint, which answer is in the following language, to wit:

\* \* \* That respondent refrains from contesting this proceeding and consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violation of the law alleged in the complaint.

Thereafter this proceeding came on regularly for disposition and decision by the Commission under subdivision 2 of Rule III of the Rules of Practice and Procedure adopted by the Commission, and the Commission being fully advised in the premises:

*It is ordered*, That the respondent, Richard A. O'Brien, in connection with the sale and offering for sale of the medicinal preparation designated in the complaint as P. H. Powder, in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from making in his advertisements of said powder or by any other means whatsoever representations or statements either in substance or effect as follows:

1. That said powder is effective to rid animals of worms.
2. That said powder is an animal conditioner.
3. That said powder cures or prevents distemper or has been proved by experience to effect a cure or prevent distemper.
4. That said powder enriches the blood or fortifies the system against infectious or other diseases.
5. That said powder cures or prevents coccidiosis, snuffles or any other diseases of dogs or fur-bearing animals.
6. That said "P.H. Powder" will eliminate intestinal parasites or digestive disturbances.
7. That said "P.H. Powder" fortifies the system against worms and infectious or other diseases.
8. That said "P.H. Powder" is an approved specific for coughs or parasitic bronchitis.

*It is further ordered*, That the respondent 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.

## Complaint

IN THE MATTER OF  
HELLER MANUFACTURING 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 2055. Complaint, July 2, 1932—Decision, Feb. 14, 1933*

Where a corporation engaged in sale of "tackers" to jobbers and retailers, and of staples or tacks for use therewith,

Included word "manufacturing" in its corporate name and displayed said name upon its advertisements, circulars, price lists, billheads, and other business stationery, and upon the labels on its products and the containers thereof, and through said corporate name, advertising, labeling, and orally by agents, represented itself as manufacturer of the products dealt in by it, facts being it neither owned nor operated a factory or plant making the same and was not a manufacturer thereof;

With tendency and capacity to mislead and deceive purchasers of its products into believing that in buying from it they were dealing with the manufacturer of the products purchased and thereby gaining an advantage by saving themselves the profit of the middleman, and with effect of unfairly diverting trade to it from its competitors and with capacity and tendency so to do:

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

*Mr. Alfred M. Craven* for the Commission.

*Mr. Jerome M. Friedlander* and *Smith, Olds, Thompson & Harris*, of Cleveland, Ohio, 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, an Ohio corporation engaged in the sale of tackers and staples to jobbers and retailers throughout the United States, and with principal place of business in Cleveland, with using misleading corporate name, misrepresenting business status and advertising falsely or misleadingly and misbranding or mislabeling in said respects, 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 aforesaid, and neither owning nor operating a plant making the products dealt in by it, which it purchases from the manufacturers thereof, uses a corporate name including the word "manufacturing", and displays the same in its advertising circulars and price lists, and other business stationery, and on labels attached to the containers of its products; with

the tendency and capacity to mislead and deceive purchasers of its products into believing that in buying from it they are dealing with the manufacturer of the products bought, and are thereby gaining an advantage in saving the middleman's profits, and with the further capacity and tendency unfairly to divert, and with the effect of diverting, trade to it from its competitors, to their prejudice.

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 9th day of July, 1932, issued and thereafter served its complaint against the respondent 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 an answer to the said complaint, a hearing was had before a trial examiner theretofore duly appointed, and testimony and evidence received in support of the charges set forth in the complaint and in opposition thereto. Thereupon, this proceeding came on regularly for final hearing, 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 its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** The respondent is a corporation organized and doing business under the laws of the State of Ohio with its principal place of business in the city of Cleveland in said State. It is now, and since its incorporation in 1930 has been, engaged in the business of selling to jobbers and retailers throughout the United States devices sometimes described as tackers for use in driving staples or tacks into various objects, and also engaged in selling to jobbers and retailers the staples or tacks suitable for use in connection with such tackers. It causes said merchandise when sold to be shipped and transported in interstate commerce from its said place of business in Ohio into and through other States of the United States to purchasers thereof at their respective points of location. Respondent since its incorporation has been and now is in competition with many other individuals, firms, and corporations located in the United States and engaged in the sale and distribution in interstate commerce of tackers, staples, and other like products.

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## Order

PAR. 2. In the course and conduct of its business respondent in soliciting the sale of and selling its products has carried on its business under its corporate name, Heller Manufacturing Co., and has caused the same to appear in its advertisements, circulars, price lists, billheads, and other business stationery and upon the labels attached to and the containers of its products. For example, on the container of its staples distributed and sold in the course of its business, as above described, respondent has affixed the label as follows:

5,000 Heller Attached Staples  
Manufactured in U.S.A.  
The Heller Manufacturing Co.  
1791 E. 38th Street, Cleveland, Ohio

Respondent in and by its corporate name and in its labeling and advertising and oral representations made through its agents has represented itself throughout the conduct of its business as a manufacturer of the products sold by it when in truth and in fact it neither owns nor operates a factory or plant where its products are manufactured nor does it manufacture its products.

PAR. 3. The representations made by respondent as alleged in paragraph 2 hereof are false and misleading and have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the belief that when purchasing from respondent they are dealing with the manufacturer of the products purchased and thereby gaining an advantage by the saving to them of the middleman's profit. The said false representations also have the capacity and tendency unfairly to divert and do divert trade to the respondent from its competitors.

## CONCLUSION

The acts and practices of respondent Heller Manufacturing Co. under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and of 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

This proceeding having been heard by the Federal Trade Commission upon the pleadings, testimony, and evidence introduced, and the brief of counsel for the Commission, and the Commission hav-

ing made its findings as to the facts with its conclusion that the respondent Heller Manufacturing Co. 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 Heller Manufacturing Co., its officers, agents, and employees do cease and desist either in the use of its corporate name or by any other means from representing that the respondent is a manufacturer.

*It is further ordered,* That the said respondent Heller Manufacturing Co. shall within 90 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  
BEN MIGDALL AND BEN RITHOLZ

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

*Docket 2057. Complaint, July 9, 1932—Decision, Feb. 14, 1933*

Where an individual engaged in sale of dress goods and similar fabrics by mail order, and neither owning nor operating any mill manufacturing merchandise so dealt in by it; in advertising said products in magazines of national circulation, and leaflets, cards, form letters and other trade literature,

- (a) Falsely represented that merchandise offered came to customer "direct from mills" and constituted "fresh goods direct from mills", facts being said products were neither made by said individual nor came direct from mill or factory; with tendency and capacity to mislead and deceive customers into believing that they were purchasing direct and thereby gaining an advantage in the saving of a middleman's profit;
- (b) Offered dress goods in bundles of various specified yardage, facts being the merchandise supplied did not have customary mill width, due to said individual's practice of splitting material so as to double lineal yardage; and
- (c) Offered to give customers ten yards free, and "a valuable set of notions FREE with each bundle ordered", facts being no additional yardage was added except where more than one bundle was ordered, and neither yardage nor notions were given free, but their cost was included in specified price paid by customer for bundle or bundles;

With capacity and tendency to mislead and deceive the purchasing public and induce their purchases from him on account of their belief in the truth of said statements and representations, and with effect of diverting trade to him from competitors, to their injury, and with tendency and capacity so to do:

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

*Mr. Alfred M. Craven* 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 individuals, engaged at Chicago as Jefferson Dry Goods Co., Eastern Textile Co., and under other trade names, in the sale

of dress goods and similar fabrics, upon orders received by them by mail, with misrepresenting business status or advantages, misrepresenting quantities, offering products falsely or misleadingly as free, and advertising falsely or misleadingly in said respects, 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 aforesaid, in their advertising represent that their merchandise comes to customers "direct from mills", and constitutes fresh goods "direct from mills", notwithstanding fact that respondents neither own nor operate any mill making such merchandise, but purchase the same from mills or other sources, with tendency and capacity to mislead and deceive purchasers into believing that they are gaining an advantage in buying from them, in saving the middleman's profit, and further, as charged, advertise and offer "dress goods in bundles consisting of varying specified amounts of yardage, thereby by implication stating that the merchandise contains a specified number of yards of material of customary and usual widths of such material as it comes from the mill, whereas it is the custom of respondents upon filling an order to split the material so as to double the lineal yardage."

Respondents further, as charged, in their advertisements "offer to give the customer 10 yards 'free', whereas in truth and in fact no additional yardage is added except when the customer orders more than one bundle of the material, and then such yardage is not given free but the cost thereof is included in the specified price paid for the bundle", and "also 'offer to give the customer a valuable set of notions free with each bundle ordered', whereas in truth and in fact the said notions are not given to the customer free, but their price and value are included in the price specified to be paid by the customer for the bundle."

Such false and misleading representations, as alleged, have "the capacity and tendency to mislead and deceive the purchasing public and to induce them to purchase from respondents in and on account of their belief in the truth of said statements and representations", and "said representations and each of them have the tendency, capacity, and effect of diverting trade to respondents from their competitors to their injury"; 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" (38 Stats. 719), the Federal Trade Commission, on the 9th day of July, 1932, issued and thereafter served its complaint against the respondents, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed an answer to said complaint, hearing was had before a trial examiner theretofore duly appointed, and testimony and evidence received in support of the charges set forth in the complaint and in opposition thereto. Thereupon, 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 findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ben Migdall is now and has been for a number of years last past engaged at Chicago, Ill., under the trade names "Jefferson Dry Goods Company", "Eastern Textile Company" and other trade names, in the business of selling dress goods and similar fabrics upon orders received by him by mail, and in the shipping and transportation of said merchandise on such orders from his principal place of business in Chicago, Ill., into and through States other than Illinois, in interstate commerce, to purchasers thereof at their various points of location throughout the United States. In the course and conduct of said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in selling dress goods and similar fabrics by mail in interstate commerce, and in the shipment and transportation of same to purchasers located throughout the United States.

PAR. 2. Said respondent, Ben Migdall, in the course and conduct of his business and for the purpose of securing orders for his said merchandise, advertises in magazines having national circulation throughout the United States, and also by means of leaflets, cards, form letters and other advertising literature, and in such advertisements and advertising literature said respondent has made and now makes numerous false and misleading representations, among which are the following:

(1) That the merchandise offered for sale by him comes to the customer "direct from mills" and that they are "fresh goods direct from mills", thereby implying that said respondent owns or oper-

ates a mill where such merchandise is manufactured; when in truth and in fact, the said respondent neither owns nor operates any mill where such merchandise is manufactured, nor does any merchandise sold by respondent come direct to respondent or direct to the customers of respondent from a mill or factory. Such representation is false and misleading and has the tendency and capacity to mislead and deceive the customers of respondent into the belief that they are purchasing direct from a mill and thereby gaining an advantage in the saving of a middleman's profit.

(2) Said respondent advertises and offers for sale said dress goods in bundles consisting of varying specified amounts of yardage, thereby, by implication, stating that the merchandise contains a specified number of yards of material of the customary and usual widths of such material as it comes from the mills, whereas it is the custom of said respondent, upon filling an order, to split the material so as to double the lineal yardage.

(3) Said respondent in his advertisements offers to give the customers 10 yards free, whereas in truth and in fact, no additional yardage is added except where the customer orders more than one bundle of the material, and then such yardage is not given "free", but the cost thereof is included in the specified price paid for the bundle.

(4) Said respondent also offers to give the customer "a valuable set of notions free with each bundle ordered", whereas in truth and in fact, the said notions are not given to the customer free, but their price and value are included in the price specified to be paid by the customer for the bundle.

PAR. 3. The various false and misleading representations set forth in paragraph 2 hereof each has the capacity and tendency to mislead and deceive the purchasing public and to induce them to purchase from respondent in and on account of their belief in the truth of said statements and representations.

Said representations and each of them have the tendency, capacity and effect of diverting trade to respondent from his competitors to their injury.

PAR. 4. The respondent Ben Ritholz, alleged in the complaint to have been engaged in the above unfair practices in association with the said respondent Ben Migdall, was not connected at any time with the said business carried on by respondent Migdall.

#### CONCLUSION

The acts and practices of respondent Ben Migdall, under the conditions and circumstances described in the foregoing findings, are

to the injury and prejudice of the public and of 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."

This proceeding as against the respondent Ben Ritholz should be dismissed.

ORDER TO CEASE AND DESIST AND ORDER OF DISMISSAL

This proceeding having been heard by the Federal Trade Commission upon the pleadings, the testimony and evidence introduced, and brief of counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the proceeding as against respondent Ritholz should be dismissed, and that the respondent Ben Migdall 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 this proceeding as to the respondent Ben Ritholz be and the same is hereby dismissed.

*It is further ordered*, That respondent Ben Migdall, in connection with the selling or offering for sale of his merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Advertising or otherwise representing that the merchandise offered for sale by him comes to the customer "direct from the mills."

(2) Offering, in his advertisements or otherwise, to give customers any merchandise free, when the price and value of such offered "free" goods is included in the price specified to be paid by the customer for the merchandise.

(3) Advertising and offering for sale dress goods or fabrics specified to contain a definite amount of yardage, when such yardage has been increased by splitting the material so as to double the lineal yardage, without stating such fact in such offer or advertisement.

*It is further ordered*, That said respondent, Ben Migdall, 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

Complaint

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## IN THE MATTER OF

## HARRY SHER, TRADING AS ALTOONA MALT CO., ET AL.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2058. Complaint, July 11, 1932—Order, Feb. 27, 1933*

Consent order requiring respondent individuals, their agents, etc., in connection with the sale in interstate commerce of malt syrup, to "cease and desist from labeling, naming, or in any other wise designating such malt syrup as Royal Canadian Malt Syrup and/or as Canadian Imperial Malt Syrup unless in immediate conjunction with and as a part of the use of the said names Royal Canadian Malt Syrup and/or Canadian Imperial Malt Syrup it clearly and plainly appears in large, conspicuous type in such naming, labeling and designating that such malt syrup is manufactured in the United States of America from and of ingredients produced in the United States of America."

*Mr. Edward L. Smith* for the Commission.

*Mr. Roy J. Stone*, of Columbus, Ohio, 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 Harry Sher, trading as Altoona Malt Company, Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, 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 Harry Sher, for more than one year prior to April 1, 1931, was engaged in the business of selling malt syrup at Altoona, Pa., where he had his principal place of business, which he conducted under the name Altoona Malt Company, and in the cities of York and Bradford, in the State of Pennsylvania, and in the cities of Elmira, Corning, Cornwell, and Jamestown, in the State

of New York, where he conducted branches of said business under various trade names. The malt syrup dealt in by said respondent was made in the United States of America from ingredients produced in the United States of America. In the course and conduct of his said business, said respondent Harry Sher, while trading as Altoona Malt Company and while trading under various other names, caused such malt syrup when sold by him to be transported from his place of business in the city of Altoona, Pa., and from his other places of business located in the cities hereinabove mentioned, to purchasers thereof located in such States and to other purchasers thereof located in various other States of the United States, and there was for more than one year prior to April 1, 1931, a constant current of commerce by said respondent in such malt syrup between and among various States of the United States. In the course and conduct of his said business, said respondent Harry Sher was for more than one year prior to April 1, 1931, while trading as Altoona Malt Company and while trading under various other trade names, in competition with other persons and with corporations and partnerships engaged in the sale of malt syrup between and among various States of the United States.

PAR. 2. In the course and conduct of his said business, said respondent Harry Sher offered for sale and sold until April 1, 1931, or thereabouts, malt syrup made in the United States of America from ingredients produced in the United States of America, which he described and designated in advertisements distributed among purchasers and prospective purchasers in the various States of the United States, on his letterheads, and on the labels of the containers of such malt syrup as:

ROYAL  
CANADIAN  
MALT SYRUP

To the left of the words "Royal Canadian Malt Syrup" used on the labels of the containers of the malt syrup sold by said respondent Harry Sher, trading as Altoona Malt Company and under various other trade names, appeared the following words printed on a representation of a maple leaf:

If you enjoy the real original Flavor, Body, and Strength  
Always insist on ROYAL CANADIAN MALT  
A Little Better than the ordinary Malt

while to the right of said words "Royal Canadian Malt Syrup" appeared the following words printed on a representation of another maple leaf:

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Results are simply amazing

Better Hop Flavor, Richer Body, and Exceptional Strength

All in a big can of ROYAL CANADIAN BRAND MALT

This malt was formerly called Canadian Style

and centered between the aforesaid representations of maple leaves and between the word "Canadian" and the words "Malt Syrup" in the aforesaid designation Royal Canadian Malt Syrup was a representation of a crown beneath which appeared the letters:

A M

CO

PAR. 3. Respondent Samuel Stone, for more than one year prior to April 1, 1931, was engaged in the business of selling malt syrup at Columbus, Ohio, where he had his principal place of business, which he conducted under the names Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and in the cities of Newark, Akron, Canton, Cleveland, Youngstown, Dayton, Lorain, Sandow, Massillon, Piqua, Steubenville, and Toledo, in the State of Ohio, and in the cities of Beaver Falls and Sharon, in the State of Pennsylvania, where he conducted branches of the said business under such various trade names. The malt syrup dealt in by said respondent was made in the United States of America from ingredients produced in the United States of America. In the course and conduct of his said business, said respondent Samuel Stone, while trading as Stone Malt Company and while trading under such various other trade names, caused such malt syrup when sold by him to be transported from his place of business in the city of Columbus, Ohio, and from his other places of business located in the cities hereinabove mentioned, to purchasers thereof located in such States and to other purchasers thereof located in various other States of the United States, and there was for more than one year prior to April 1, 1931, a constant current of commerce by said respondent in such malt syrup between and among various States of the United States. In the course and conduct of his said business, said respondent Samuel Stone was for more than one year prior to April 1, 1931, while trading as Stone Malt Company and while trading under such various other trade names, in competition with other persons and with corporations and partnerships engaged in the sale of malt syrup between and among various States of the United States.

PAR. 4. In the course and conduct of his said business, said respondent Samuel Stone offered for sale and sold until April 1, 1931, or thereabouts, malt syrup made in the United States of

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America from ingredients produced in the United States of America, which he described and designated in advertisements distributed among purchasers and prospective purchasers in the various States of the United States, on his letterheads, and on the labels of the containers of such malt syrup as:

CANADIAN  
IMPERIAL  
MALT SYRUP

To the left of the words "Canadian Imperial Malt Syrup" used on the labels of the containers of the malt syrup sold by said respondent Samuel Stone, trading under the aforesaid various trade names, appeared the following words printed on a representation of a shield:

CANADIAN IMPERIAL results are simply amazing, adds a new and irresistible flavor to every dish. The original malt of its kind. Formerly known as Royal Canadian.

while to the right of the said words, "Canadian Imperial Malt Syrup," appeared the following words printed on a representation of another shield:

CANADIAN IMPERIAL is a new delightfully different product manufactured by a special process from the choicest of grains and hops. There is nothing else like it. Insist on the big 4¼ lb. can.

and printed underneath the said last mentioned lettering were the words:

Packed especially for  
Canadian Imperial Distributing Company

In the center of the said label and between the words "Canadian Imperial" and the words "Malt Syrup" in the aforesaid designation "Canadian Imperial Malt Syrup" was a representation of a crown above and between two lions rampant.

PAR. 5. On or about April 1, 1931, the aforesaid business which prior to that time had been conducted by said respondent Harry Sher as hereinbefore described, and the aforesaid business which prior to that time had been conducted by said respondent Samuel Stone as hereinbefore described were combined through the organization of a partnership consisting of the said Harry Sher, respondent, the said Samuel Stone, respondent, I. J. Stone, respondent, and Jack Sher, respondent, since which aforesaid date, to wit, April 1, 1931, or thereabouts, both of the aforesaid businesses have been conducted

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by the said partnership under various trade names, to wit, Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and others. The said partnership has continued to sell between and among the various States of the United States, malt syrup manufactured in the United States of ingredients produced in the United States, as "Royal Canadian Malt Syrup" and as "Canadian Imperial Malt Syrup," both of which said brand names have appeared and still appear in advertisements of all of said respondents, trading under the aforesaid and other trade names, distributed among purchasers and prospective purchasers in the various States of the United States, on their letterheads, and on the labels of the containers of such malt syrup.

The labels used on containers of the aforesaid malt syrup styled by the aforesaid respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher trading as Stone Malt Company and under such various other trade names, as Royal Canadian Malt Syrup is substantially the same as that previously used by said Harry Sher, respondent, and described in paragraph 2 hereof, with certain exceptions, to wit:

Instead of the letters "A M CO" under the crown as described in paragraph 2 hereof, the letters "R C CO" appear; and instead of the name "Altoona Malt Company" appearing on the said labels there appears the following wording:

Sole distributors  
Royal Canadian Distributing Company  
37 W. Spruce St., Columbus, O.

and in small and in inconspicuous type (not clearly observable) on such new labels appear the words:

Made in the good old U.S.A.

The labels used on containers of the aforesaid malt syrup styled by the aforesaid respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher trading as Stone Malt Company and under such various other trade names, as Canadian Imperial Malt Syrup is substantially the same as that previously used by said Samuel Stone, respondent, and described in paragraph 4 hereof, except that on such new labels appear in small and in inconspicuous type, not clearly observable, the words:

Made in the good old U.S.A.

PAR. 6. Malt syrup made in Canada or made in the United States from and of ingredients produced in Canada is widely and popularly



known among the purchasing public in the United States, many members of such purchasing public preferring malt syrup made in Canada or in the United States from and of ingredients produced in Canada over malt syrup made of ingredients produced in countries other than the Dominion of Canada. The maple leaf, crown, shield and lions rampant as used on the labels hereinbefore described have generally been and still are associated, in the public mind, with the Dominion of Canada and as used on the labels hereinbefore described convey the impression that the syrup sold in the containers so labeled is made in Canada or in the United States from and of ingredients produced in the Dominion of Canada.

PAR 7. The practice of the respondent Harry Sher, trading as Altoona Malt Company and under various other trade names, in offering for sale and selling malt syrup manufactured in the United States from and of ingredients produced in the United States but labeled and branded as set out in paragraph 2 hereof; and the practice of the respondent Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, in offering for sale and selling malt syrup manufactured in the United States from and of ingredients produced in the United States but labeled and branded as described in paragraph 4 hereof; and the use by said respondent Samuel Stone of the word "Canadian" in his various trade names as set forth in paragraph 3 hereof; and the practice of the respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, in offering for sale and selling malt syrup manufactured in the United States from and of ingredients produced in the United States but labeled and branded as described in paragraphs 2, 4, and 5 hereof; and the use by said respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher of the word "Canadian" in their various trade names, have had and have the capacity and tendency to mislead and deceive and have furnished wholesale and retail dealers with the means to mislead and deceive the purchasing public into the belief that the malt syrup so labeled, branded, described, and sold by said respondents under said trade names of which the word "Canadian" is a part, has been, was, and is a Canadian malt syrup imported into the United States, or malt syrup manufactured from and of ma-

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terials or ingredients produced in Canada, and to induce the purchase of such malt syrup in reliance upon such erroneous belief. Such practices have had and have the capacity and tendency to divert trade to respondents from competitors offering malt syrup for sale in interstate commerce.

PAR. 8. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' 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

The respondents herein having filed their answer to the complaint in this proceeding and having subsequently filed with this Commission their motion that they, and each of them, be permitted to withdraw their said answer, that they, and each of them, be permitted to waive hearing on the charges set forth in the said complaint and not to contest the said proceeding; and the respondents having consented that this Commission might make, enter and serve upon them, and each of them, as provided in paragraph 2 of Rule III of the Commission's Rules of Practice, an order to cease and desist from the methods of competition described in said complaint; and the Commission being fully advised in the premises,

*It is hereby ordered,* That the aforesaid motion be and the same is hereby granted; and it is hereby further ordered that the said respondents, Harry Sher, trading as Altoona Malt Company, Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and each of them, their agents, employees, and representatives in the sale, offering for sale, or advertising for sale in interstate commerce of malt syrup forthwith cease and desist from labeling, naming or in any other wise designating such malt syrup as "Royal Canadian Malt Syrup" and/or as "Canadian Imperial Malt Syrup" unless in immediate conjunction with and as a part of

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the use of the said names "Royal Canadian Malt Syrup" and/or "Canadian Imperial Malt Syrup" it clearly and plainly appears in large, conspicuous type in such naming, labeling, and designating that such malt syrup is manufactured in the United States of America from and of ingredients produced in the United States of America.

*It is hereby further ordered,* That the said respondents, and each of them, shall, within 60 days after the service upon them, and each of them, of this order, file with this Commission a report or reports in writing setting forth in detail the manner and form in which they, and each of them, have complied with this order.

Complaint

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## IN THE MATTER OF

MAHAFFEY COMMISSION COMPANY AND C. E. MALMIN,  
ALIAS "NORTHERN AGRICULTURAL INSTITUTE"COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2066. Complaint, Oct. 3, 1932—Order, Mar. 1, 1933*

Consent order requiring respondents, their agents, etc., in connection with sale in interstate commerce of seed potatoes, to cease and desist from representing, directly or by implication, "that inspection or certification by the respondent, C. E. Malmin, is certification or inspection by the 'Northern' or any other 'agricultural institute' or that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case".

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Justus Chancellor, Jr.*, of Chicago, Ill., 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 Mahaffey Commission Co., a corporation, hereinafter referred to as the company, and C. E. Malmin, an individual who styles and designates himself as "Northern Agricultural Institute", and each of them, 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. The respondent, Mahaffey Commission Co., is a corporation organized, existing, and doing business in the State of Illinois, having its office and principal place of business in the city of Chicago, State of Illinois. The respondent C. E. Malmin under the alias "Northern Agricultural Institute" is and has been in the exclusive employ of the other respondent as an inspector of seed potatoes under arrangements and circumstances hereinafter more fully set out.

For approximately the 2 years last past the respondent company, as a commission merchant, has been engaged in the sale and distribution of seed potatoes, by it purchased in carload lots from the sellers located in various States other than the State of Illinois, and

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shipped by those sellers from such other States to the company at Chicago, Ill. In the course and conduct of its business, while the said carloads of seed potatoes are in Chicago awaiting resale and transshipment, the company employs the respondent Malmin to certify and tag the bags in which said potatoes are contained. Respondent Malmin designating himself as Northern Agricultural Institute, for hire, upon the instructions of the company, thereupon certifies and tags the said seed potatoes by attaching to the said bags tags in words and figures following:

CERTIFIED  
N O R T H E R N   A G R I C U L T U R A L  
I N S T I T U T E  
S E E D   P O T A T O E S

[Front]

CERTIFIED SEED POTATOES

Variety-----

The potatoes packed in this bag are improved seed carefully selected and graded and have been inspected and certified to by an authorized inspector for the Northern Agricultural Institute. At least 90% of tubers conform to characteristic type of variety.

N O R T H E R N   A G R I C U L T U R A L   I N S T I T U T E,  
C h i c a g o ,   I l l .

——— Lbs. Net Weight When Packed.

[Reverse]

PAR. 2. In the course and conduct of his employment and while the seed potatoes are in the cars in the railroad yards at Chicago, Ill., awaiting rebilling to final destination, respondent Malmin places

these certificates and tags upon the sacks in which the seed potatoes are contained, with the purpose and result of having said certificates and tags transported with the potatoes from the State of Illinois in and through various other States of the union all in aid and furtherance of respondent company's acts of unfair competition herein set forth.

The said potatoes thus certified and tagged by respondent Malmin, respondent company acting sometimes as broker and sometimes as a middleman, transships and resells to various buyers, other commission merchants, middlemen, wholesalers, jobbers, and chain stores at a price which includes a premium, or an advance price over that price which is charged for uncertified seed potatoes which price is charged and received by reason of such certification and tagging.

PAR. 3. Respondent company causes the said seed potatoes to be reshipped from the city of Chicago in the State of Illinois into and through various other States of the United States to the purchasers thereof.

In the course and conduct of its business as aforesaid the respondent company is in competition with other individual partnerships and corporations engaged in the sale and distribution in interstate commerce of seed potatoes.

PAR. 4. For more than two years last past through the efforts of State and local organizations, educational institutions, and widely disseminated information by State and National agencies, potato planters have come to recognize the value of planting seed potatoes certified to be free from various diseases deleteriously affecting crop production such as "dwarfing", "running out", or "mosaic", some of which diseases are destructive, soil-inoculating, and can only be detected by inspection of the growing seed potato plant. Seed potatoes are grown almost exclusively in those States in the northern half of the United States, and transshipped, with Chicago, Ill., as a central distributing point, to States in the southern portion of the United States and virtually all of the seed potato raising States have made provisions for field inspection conducted by trained men during the growing season, generally under the auspices of the State Agricultural College or other organization or institution. After such inspection there is customarily a certificate issued which the grower may attach to his bags of seed potatoes prior to shipment. From the foregoing educational propaganda, customs and practices in the seed potato trade, wholesalers, jobbers, retailers, and many of the consuming public have come to associate, where seed potatoes are concerned, the word "certified" with a product which, while still growing, has been competently and disinterestedly inspected for free-

dom from destructive plant diseases, under the supervision of an accredited Federal or State institution or organization, and also have come to associate the words "agricultural institution", where used in connection with seed potatoes, with an accredited educational or scientific institution. By reason of such trade practices and association of ideas purchasers have been and are willing to and do pay higher prices for seed potatoes which have been certified in such manner.

PAR. 5. Under and by reason of the foregoing circumstances the certification and tagging of said seed potatoes done by respondent Malmin at the instance of the company as above set out, respondent company in the course and conduct of its business, falsely represents and has represented to purchasers and prospective purchasers that such seed potatoes have been competently and disinterestedly inspected, and that they are therefore free from "dwarfing", "running out", "mosaic", and any other potato disease determinable by inspection of the growing seed potato plant, when in truth and in fact such is not the case; and the prospective purchasers, believing and relying upon the truth of such representations, purchase the seed potatoes at a price higher than they would for seed potatoes not inspected and certified in the manner in which they believe respondent company's seed potatoes have been inspected and certified.

PAR. 6. In the course and conduct of its business as aforesaid, by means of the certification and tagging of said seed potatoes in the manner above set out, respondent company falsely represents to purchasers and prospective purchasers that its said seed potatoes are freer from "dwarfing" "running out", and "mosaic", and other potato plant diseases than seed potatoes which have not been inspected while growing and thereafter certified by competent and disinterested persons or organizations, and the prospective purchasers believe and rely upon the truth of said representation. Such representation is passed on by respondent company to, through, and by various buyers, commission merchants, middlemen, wholesalers, jobbers, and chain stores aforesaid, to the ultimate purchasers who, believing and relying thereon, purchase and plant seed potatoes of a quality and condition productive of inferior crops, risk of soil-inoculation and actual inoculation of the soil with disease producing bacilli.

PAR. 7. In the course and conduct of his employment by respondent company as aforesaid, the respondent Malmin, in procuring and affixing the aforesaid tags and certificates to the sacks of seed potatoes while en route from the source of their production to their final desti-

nation into and through various States of the United States, places in the hands of respondent company the means of deceiving its prospective purchasers and the ultimate purchasers of said seed potatoes, as to the pedigree, quality, value, and kind of said seed potatoes so purchased and also as to the nature and kind of inspection to which such seed potatoes have been subjected.

PAR. 8. The aforesaid methods used by respondent company in the course and conduct of its business, aided and abetted for hire by respondent Malmin, have a tendency to and do unfairly result in (a) respondent company's being able to sell its so-called "agricultural-institute-certified" seed potatoes at a greater profit than can be obtained by competitors who do not misrepresent to their prospective purchasers in the manner and form hereinabove set out, and (b) respondent company's being able to undersell those of its competitors who in the course and conduct of their business have had their seed potatoes field-inspected by competent disinterested persons under supervision of accredited national or state associations or institutions and who, after paying the reasonable and usual expenses of such inspection and certification (greater than the expenses of respondent company's so-called inspection and certification), are unable to compete with respondent company at a profit.

PAR. 9. The foregoing methods of competition and each of them are to the prejudice of competitors of the respondent company, to the prejudice of the public, and have a tendency to divert trade from respondent company's competitors to respondent and constitute unfair methods of competition in interstate commerce within the intent and meaning 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 come on for final hearing by the Federal Trade Commission upon the respondents' answer waiving all further procedure and consenting that the Commission may make, enter and serve upon them an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises,

*It is now ordered,* That the respondents, Mahaffey Commission Co., a corporation, C. E. Malmin, an individual and the agents, representatives, servants, and employees of each of them, in connection with the sale or offering for sale in interstate commerce of seed potatoes cease and desist from representing directly or by implication—



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That inspection or certification by the respondent, C. E. Malmin, is certification or inspection by the "Northern" or any other "agricultural institute" or that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case.

*It is further ordered,* That the respondents and each of them shall within 60 days from the date of 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 and each of them have complied with the order herein set forth.

## IN THE MATTER OF

CONGO PICTURES, LTD., NATHANIEL H. SPITZER, INDIVIDUALLY, AND AS PRESIDENT OF CONGO PICTURES, LTD., WILLIAM ALEXANDER, INDIVIDUALLY, AND AS VICE PRESIDENT OF CONGO PICTURES, LTD., WILLIAM SYDNEY CAMPBELL, INDIVIDUALLY, AND AS SECRETARY OF CONGO PICTURES, LTD., HAROLD D. SMITH, AN INDIVIDUAL

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

*Docket 1938. Complaint, Apr. 8, 1931—Decision, Mar. 27, 1933*

Where a corporation created to exploit a motion-picture film as an authentic record of an African scientific expedition, and officers and organizers of said corporation; in offering and advertising said film, which (1) was created by said organizers through acquisition and merging of films theretofore made, and depicting authentic scenes of African exploration and travel with film made under their direction in or near Los Angeles, (2) displayed orang-utans for the gorillas purportedly shown, and American negro women and children for the "wild" and "strange" women, children, and pygmies ostensibly portrayed in their native Africa by the film in question, (3) made use of actors, including one in the skin of a gorilla, to depict fictitious, fanciful, and fantastic happenings inserted by them, and of a turtle, made up with wings, scales, and a long tail to portray a newly discovered animal, and (4) was called "Ingagi," falsely asserted African name for Gorilla,

Referred to said film as the "Belgian Congo Picture \* \* \*, the amazing camera captures of the Royal expedition into the heart of Africa headed by Sir Hubert Winstead, F.R.G.S.", "noted anthropologist" and "intrepid big game hunter," and as "an authentic incontestable celluloid document showing the sacrifice of a living woman to gorilla hordes \* \* \*", "an authentic record of African adventure. The spectacular sensational real adventure film made with untold difficulties in the heart of equatorial Africa", "a production of actual experiences", "photographed under the most unbelievable difficulties and dangers", and described the film as recording the expedition of "Sir Hubert Winstead, F.A.S.", and "Captain Daniel Swayne", a young American big game hunter and "collector of museum specimens" into "the heart of the Congo", into the gorilla country, "in the vicinity of Burunga, in the mountains, where they encountered not only gorillas in plenty, but wild women, queer children that seemed to be the offspring of some unholy alliance \* \* \*, the most thrilling, awe inspiring and dramatic record of actual experience in the heart of equatorial Africa ever made \* \* \*", etc., along with the comment "Real adventures make fiction seem tame", and reference to aforesaid strange "new" beast, discovered and named Tortadillo, due to resemblance to a cross between a tortoise and an Armadillo; and

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Included with the picture a descriptive sound lecture, supposedly in the language, according to accompanying foreword, of "Sir Hubert Winstead, F.A.S., scientist and big game hunter", who, along with "Captain Daniel Swayne, an American hunter", "headed a safari which penetrated to the depths of the Belgian Congo" and supplied the camera record ostensibly displayed in the film in question, in which sound lecture the supposed Sir Hubert comments on the various scenes disclosed, including charge of a wounded lion, injuries inflicted, discovery by "Captain Swayne" of the Tortadillo, glimpses of pygmies, wild women accompanied by giant "Ingagi", account of a strange looking child seemingly more ape than human, of the gorilla's attempted carrying away of the native woman offered as an annual tribal sacrifice to the "Ingagi", and its slaying, followed by a glimpse of "one of those queer half human women", who "gazed upon the dead monster \* \* \* seemingly unable to comprehend" and, "catching the click of the camera, fled into the jungle";

Notwithstanding fact that characters of "Sir Hubert" and "Captain Swayne", their supposed expedition and their aforesaid, asserted extraordinary adventures and sights were fictitious and said film, offered not as fiction, but as an authentic depiction of an African expedition, exploration and big game hunt and faithful record of its happenings and events, (a) was made as hereinabove indicated, with many jungle scenes taken in a Los Angeles Zoo, and with the part of the charging lion taken by a tame animal frequently used for motion-picture purposes, and (b) displayed as part of asserted authentic African scenes, animals and plants neither indigenous to, nor found in said country;

With intent and effect of misleading prospective and actual attendants at public exhibitions of film in question, inducing exhibitors to lease and exhibit said picture, and persons to attend exhibitions thereof, who would not otherwise have done so, and of misleading and deceiving the public into paying for admission to theatres displaying said film in the erroneous belief that picture in question constituted an authentic pictorial record of an actual expedition into Africa, participated in as aforesaid and displaying pictures of actual animals and persons taken in said country; and

With further effect of diverting trade to said corporation and individuals and to their lessees from competing producers or lessors of motion pictures and their lessees or exhibitors, and with tendency to discredit and cause loss of public confidence in travel and educational motion pictures, to the detriment and injury of competitors selling such pictures in interstate commerce through truthful representations:

*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 in interstate commerce.

*Mr. G. Ed. Rowland* for the Commission.

*Phillips & Nizer*, 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 company, a California corporation organized to distribute

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a certain film in interstate commerce to motion picture exhibitors of the United States, and with office and principal place of business in Hollywood, and four individuals, incorporators of said corporation, and, in the case of three of their number, president, vice president, and secretary thereof, with advertising falsely or misleadingly as to history and 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.

Respondents, as charged, with intent and effect of misleading the public, and causing members thereof to pay admission prices to theaters exhibiting said film, represented the same (by them titled "Ingagi", falsely asserted native name for the gorilla), as an authentic portrayal of a scientific expedition into the heart of Africa, in the gorilla country, headed by "Sir Hubert Winstead, F.A.S., noted anthropologist of London and Captain Daniel Swayne, big game hunter", and in their advertisements in newspapers and elsewhere and in their display advertising and in the film itself, and in the sound lecture accompanying same and commenting thereon and purporting to be remarks of the aforesaid Sir Hubert, referred to and displayed or purported to display wild women who consorted with gorillas, annual tribal sacrifice of a native woman to the gorillas, half-breed children or "off-springs of unholy alliances", discovery of a strange animal representing or resembling a cross between a tortoise and an armadillo (and accordingly by them named the tortadillo), conflicts between wild beasts, etc., and queried, in connection with "discoveries" of and references to "wild women", etc., whether the "missing link" had at last been found and set forth in advertising scenes not portrayed in the film itself.

The facts were that "Sir Hubert Winstead" and the asserted expedition were fictitious, said film as a whole was not an authentic depiction of African travel, but was composed of some film displaying authentic depictions of African travel, made long theretofore, and purchased by them from film libraries or other sources, together with film made in or near Los Angeles under their supervision, in which were displayed the sensational scenes and happenings described and featured, as above suggested, and in which the roles of the "wild women" and pygmies, and half-breed children were taken by American negroes prepared for the parts, roles of gorillas were supplied by chimpanzees and orang-utans, and, in the case of the native woman offered as a tribal sacrifice, by a man in the skin of a gorilla, and animals from the local zoo, and tame lions were used for wild animal scenes depicted, and life neither indigenous to, nor found in Africa, was displayed.

Such statements and representations, circulated and distributed by respondents in interstate commerce, are "false, fraudulent, deceptive and misleading, and have the tendency and capacity to, and do, mislead and deceive exhibitors owning and operating theaters where motion pictures are shown, and the public, and cause said exhibitors to lease the said film "Ingagi", and exhibit it to the public in their said theaters, in the belief that the statements and representations are true, and that the said film is in fact an authentic picture of African travel and adventure, and to cause members of the public to pay admission prices to see the said film, in motion picture theaters, relying on the truth of said statements and representations", and such false, fraudulent, deceptive and misleading representations and statements with reference to said motion picture film, as alleged, have tended to divert and have diverted trade from competitors, of whom some "take motion pictures in Africa, and other foreign countries, and distribute and lease such films in interstate commerce to theaters throughout the United States, to be exhibited to the public", and said alleged acts and practices of respondents, as charged, are all to the prejudice of the public and competitors, 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, Congo Pictures, Ltd., a corporation, Nathaniel H. Spitzer, individually, and as president of Congo Pictures, Ltd., William Alexander, individually, and as vice president of Congo Pictures, Ltd., William Sydney Campbell, individually, and as secretary of Congo Pictures, Ltd., and Harold D. Smith, an individual, charging them with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance through their attorney, and having filed their answer to said complaint, a stipulation as to the facts was agreed upon by and between respondents and the chief counsel of the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission, and in lieu of testimony in support of the charges stated in the complaint, or in

opposition thereto, and that the Commission may proceed further upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and conclusion, and enter its order disposing of the proceeding.

Thereupon, this proceeding came on for final hearing, 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 conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Congo Pictures, Ltd., is a corporation organized under the laws of the State of California in 1929, having its office and principal place of business at 1105 N. Western Avenue, in the city of Los Angeles, State of California, and a New York office located at 729 Seventh Avenue, in the city of New York, State of New York.

Respondents Nathaniel H. Spitzer, William Alexander, William Sydney Campbell, and Harold D. Smith are the incorporators of respondent, Congo Pictures, Ltd., and the three first named are and have been president, vice president, and secretary of said respondent corporation since its organization.

PAR. 2. The respondents above named are and have been, during several years last past, engaged in the business of leasing for exhibition purposes in the theaters of the United States, a motion picture film named and titled "Ingagi". In the course and conduct of said business, said respondents have caused positive prints of said motion picture to be made, and have distributed said positive prints from their principal office and place of business in the city of Los Angeles, State of California through and into the various States of the United States to certain persons, partnerships, and corporations who obtained from respondents the rights to the distribution of said motion picture film in certain defined territories and said latter persons, partnerships, and corporations leased said motion picture film to theaters located in their said territories for exhibition to the public.

In the course and conduct of such business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture and leasing of motion picture films and in the distribution of the same in interstate commerce for exhibition to the public in theaters throughout the United States.

PAR. 3. Respondent, Congo Pictures, Ltd., was organized by the individual respondents for the purpose of distributing said motion

picture film "Ingagi" in interstate commerce to the motion picture exhibitors of the United States for exhibition to the public. State rights to distribute the film in some territories were sold by respondent, Congo Pictures, Ltd., and in other territories the said film was distributed directly by said respondent, Congo Pictures, Ltd. The said film "Ingagi" has been extensively shown in theaters in cities and towns throughout the United States.

PAR. 4. In 1929 respondents Nathaniel Spitzer, William Alexander, William Sydney Campbell, and Harold D. Smith obtained from film libraries and other sources authentic films depicting scenes of African explorations and travel, including a film named and titled "Heart of Africa", which was a film containing moving picture scenes of a trip in 1914 and 1915 in and through parts of British East Africa (Tanganyika) by an expedition organized and headed by Lady Grace E. Mackenzie, consisting of at least 20,000 feet of film.

Said respondents used the authentic films of African travel thus obtained as a part of said motion picture film "Ingagi", and added thereto certain scenes taken in and about the city of Los Angeles, Calif. The said scenes taken in and about the city of Los Angeles purported to depict the pygmies of Africa in their native land, native African women, gorillas, children alleged to be half-human and half-ape, the annual sacrifice by a tribe of African natives of a negro woman to gorillas and her capture by said gorillas, an animal alleged to be a new and previously unknown species, and other scenes purporting to show authentic African scenes. The aforesaid scenes made in and about Los Angeles, together with the authentic scenes of African travel and life, obtained by respondents from film libraries and other sources, were cut, assembled, and made into a complete continuous motion picture film which was titled "Ingagi". There was added to and incorporated in said film a descriptive sound lecture, alleged to be given by one Sir Hubert Winstead, F.A.S., F.R.G.S., who was described as a noted anthropologist of London, England.

PAR. 5. In the course and conduct of their business, as set forth in paragraph 2 herein, and as part of the exploitation to the public of said motion picture film "Ingagi", respondents, to aid in soliciting the lease and distribution of the said film in interstate commerce, have prepared for and caused to be inserted in newspapers and other publications having general circulation between and among the various States of the United States, advertising copy, consisting of pictures, newspaper reading matter, display advertising, and other literature. Said respondents have distributed and circulated

the said advertising copy and other advertising literature in interstate commerce to State rights' distributors who acquired the distribution rights of said film in their respective territories, and have used said advertising copy and other advertising literature in the exploitation of said film in territories in which said respondent, Congo Pictures, Ltd., distributed said film. The advertising copy and other advertising literature hereinbefore described was supplied to and used by the motion picture exhibitors in whose theaters the said film "Ingagi" was shown, both in local newspaper advertisements and in lobby displays in said theaters.

Among the statements and representations made by respondents in the advertising copy and newspaper advertising literature prepared by them and supplied to State rights' distributors for use by exhibitors in advertising the said picture to the public, and supplied by respondents to exhibitors in territories in which respondents distributed said film, for use in advertising the said picture to the public, were the following:

Nothing Like It Ever Seen Before  
The Belgian Congo Picture with the New Slant  
The Amazing Camera Captures of the Royal  
Expedition into the Heart of Africa  
Headed by Sir Hubert Winstead, F.R.G.S.

\* \* \* \* \*

**GORILLAS, WILD WOMEN! IN SHOTS UNBELIEVABLE**

An authentic incontestable Celluloid  
Document Showing the Sacrifice of a  
Living Woman to Gorilla Hordes!  
The Term for Gorilla in the African Tongue is  
"INGAGI"

\* \* \* \* \*

Congo Pictures, Ltd.

U.S. Headquarters, 1105 N. Western Ave., Hollywood, Calif.

N.Y. Representative—William Alexander—Hotel Astor

"On this page appear a number of advertisements for newspapers which have been prepared for you by experts. We advise you to use as much newspaper space as possible because its value has been tested and proved time and again. You've got a great picture. Tell the public about it and pack your theatre."



“These newspaper advertising mats are supplied to you at cost price because we want you to make free use of them. You can't go wrong in the use of these prepared ads because they are business getters.”

The Wonder Film “INGAGI” (Gorilla)

See The Gorilla Hunt and Finding of Strange Creatures

Apparently Half Ape—Half Human. \* \* \*

A Million Thrills—An Authentic Record of African Adventure

The Spectacular, Sensational Real Adventure Film

Made with untold Difficulties in the Heart of Equatorial Africa

INGAGI

Has the Secret of the Missing Link been discovered?

“INGAGI”

“GORILLA”

The Film of a

Thousand Wonders!

An Amazing Record of Authentic

African Adventure

“Sir Hubert Winstead, F.A.S., together with Capt. Daniel Swayne, a young American big-game hunter, penetrated to the heart of the Congo—into the gorilla country, in fact, which is in the vicinity of Burunga, in the mountains—and there encountered not only gorillas in plenty but wild women, queer children that seemed to be the offspring of some unholy alliance and finally came upon a tribe very low in the scale of intelligence which had a yearly custom of giving a woman to the apes! Unbelievable as it seems, the record has been obtained and is the terrific and smashing climax of the big game hunt picture, ‘Ingagi’.”

“Congo Pictures, Ltd., is sponsoring the film which was many, many months in the making, and is in eight reels—the most thrilling, awe-inspiring and dramatic record of actual experience in the heart of equatorial Africa, ever made. \* \* \* The picture has been carefully assembled and edited by William J. Campbell from the thousands upon thousands of feet of film brought back from the jungle.”

Real Adventures Made Fiction Seem Tame

“Sir Hubert Winstead, F.A.S., eminent anthropologist, hunter and explorer, of London, England, and Captain Daniel Swayne, an American hunter and museum collector, together with Ed Joyce, an intrepid cameraman, and a big safari, started from Nairobi, Africa, many, many months ago and penetrated to the Gorilla Country which

lies in the Belgian Congo and is among the wildest and least known spots in the Dark Continent.”

“The record of their experiences is to be seen in this new film, presented by Congo Pictures, Ltd. \* \* \*

“Take the fabled ‘missing link!’ Perhaps the Scopes trial might have had a different aspect had this picture been in existence at the time. For Sir Hubert believes he has found the missing link. They encountered a colony of strange creatures apparently half-ape, half-human, captured a child that may be a half-breed and saw numbers of what were apparently wild women in company at times with gorillas!

“Hard to believe—but the picture is a record that seems indisputable.”

Strange, Unknown Animal is

Found in Africa

Shown in New Film “Ingagi”

“Ever see a Tortadillo? Do you ever hope to see one? If so, it’s a forlorn hope, because they are decidedly scarce and when found are too venomous to handle. The first one ever seen on the screen will be visible in ‘Ingagi’, the startling African game hunt picture \* \* \*

“Capt. Swayne came upon the strange beast, which looked like a cross between a tortoise and an armadillo. It seemed harmless enough and was handled carelessly by the scientists and his companions. Then a dog smelled of it and quickly the creature snapped, catching the dog’s ear. In sixty seconds the canine was dead!

“After that the beast was given a wide berth. Sir Hubert dubbed it ‘Tortadillo’—a combination of tortoise and armadillo—but so far its exact genus is a matter of doubt. It will be carefully examined by experts in London, for they succeeded in bringing one of the animals—or reptiles—home alive.

“‘Ingagi’ is an amazing picture presented by Congo Pictures, Ltd. It is a production of actual experiences and photographed under the most unbelievable difficulties and dangers. As an educational feature or as sheer entertainment it thoroughly qualifies. Sound effects are supplied to enhance the interest.

“Sir Hubert Winstead, F.A.S., noted anthropologist and also an intrepid big game hunter; with Capt. Daniel Swayne, a young American hunter, and collector of museum specimens, headed the safari whose adventures are seen in ‘Ingagi’ \* \* \*

“Sir Hubert, a bluff, hearty, and instinctively kind-hearted person, is one of the best informed men on the subject of big game in the world. He is also a student of the anthropoids, such as the gorilla,

and in this picture are recorded such exciting scenes as the capture of a big bull gorilla, and the discovery of creatures apparently half-ape, half-human!"

In a communication headed "To The Exhibitor", distributed by respondents, are the following statements, among others:

There have been many animal pictures, many big game hunt films, many productions dealing with adventure in Africa and other parts of the world. But—

There has never been another picture like "Ingagi."

In this press sheet you have been supplied with newspaper reading matter of every description, samples of news mats, advertisement mats, and so on. This material is for your use in "putting over" this picture, and we hope you will make good use of it.

But above all, you must realize what you have in "Ingagi"—it is no ordinary picture. It is a record of travel, of adventure in the heart of Equatorial Africa \* \* \* the discovery of creatures apparently half-human, half-ape, in the heart of the Gorilla country \* \* \*

\* \* \* Here is something you can exploit like a "house-afire." You can bill the town like a circus. You can tell your patrons that here is a thriller which has the imaginary romances of the screen backed off the canvas. \* \* \*

Yours for success,

CONGO PICTURES, Ltd.

PAR. 6. At the time the motion-picture film "Ingagi" was cut, assembled, and made into a continuous motion-picture film, as described in paragraph 4 herein, there was added to and incorporated in said film a descriptive sound lecture, claimed to be delivered by one Sir Hubert Winstead, who was represented by respondents as being an eminent anthropologist, fellow of the Anthropological Society, noted scientist, and big-game hunter. Said sound lecture included a "Foreword", and purported to be a description of the scenes in the said film "Ingagi", and was delivered during the showing of the film.

The "Foreword" to the sound lecture is as follows:

In the Spring of 1926, Sir Hubert Winstead, F.A.S., scientist and big-game hunter, headed a safari which penetrated to the depths of the Belgian Congo. The camera record of this adventure is here presented under the title "Ingagi", an African word signifying gorilla. After many terrific encounters with ferocious beasts of the jungle and plain, the expedition reached the gorilla country where opportunity was found to record the life of the giant anthropoids in their native habitat.

Various strange tales were heard from natives, regarding the big apes, some to the effect that they occasionally attacked human beings and again, lived peacefully with their human brethren of certain remote tribes. While unable to obtain concrete proof of the more startling legends, the expedition nevertheless secured material for the most amazing motion picture ever presented.

During three years occupied in making this picture, Sir Hubert was afforded invaluable aid by Captain Daniel Swayne, an American hunter, and a corps of

expert cameramen. Daily, the adventurers risked their lives in efforts to obtain results never before achieved. That they were successful, the following record proves. It is with regret that the tragic attack of an infuriated lion upon one of the party is included, but Sir Hubert felt that it was a definite feature of the adventure and should not be omitted.

The expedition and resultant records were intended by Sir Hubert solely as a contribution to science, without regard to the commercial aspect, but when the entertainment and educational features were brought to his attention, he finally consented to the public presentation of the picture, together with his verbal description of the experience.

The rest of the sound lecture purported to describe the various scenes depicted in the film "Ingagi" and was delivered, including the "Foreword", during the showing of the film upon the screen in the first person by a voice which was represented to be that of Sir Hubert Winstead, an eminent anthropologist, scientist and big game hunter. Excerpts from the sound lecture are as follows:

We wounded this big beast, and he ran for the clear with the natives in pursuit. \* \* \* Our cameraman, Ed Joyce, was on the job, and exhibited more steel nerve with his camera than I did with my gun. \* \* \* "Look out, Ed, he's coming!" Two females came charging out, and one caught Carrol unprepared. After our wounded had been cared for, we found we had bagged the largest lion ever taken in this region. Weighed 508 pounds and measured nine feet from the tip of his nose to the tip of his tail. \* \* \*

Another grave robber, the armadillo, who feasts upon the dead. \* \* \*

Meanwhile, Captain Swayne came across an animal of such queer character, that no one could give a name to it. It seemed like a cross between an armadillo and a tortoise; so Swayne called it a Tortadillo. So far as we have been able to learn, it is a species heretofore unknown to science.

We handled the creature with interest, until it snapped at one of our dogs—in about three minutes the canine was dead. After that, we gave the venomous devil a wide berth. \* \* \*

In this village we heard two interesting pieces of information. One, that there was a tribe of pygmies near at hand. The other, regarding the gorillas—Ingagi, they called them.

We were soon to come upon our most amazing adventure.

All but 18 of our boys had now deserted.

Cutting our way through the dense underbrush, we were conscious of being watched by hundreds of invisible eyes. We caught a glimpse of the little fellows, wild as March hares.

One of the party tried to tempt them into the open, but they were as shy as a bevy of debutantes.

They were anxious for the beads. A tempting bait. We got a few camera shots of the little beggars, but never laid eyes upon them after that.

\* \* \* \* \*  
 Through the trees \* \* \* we caught sight of what seemed like human beings and gigantic apes. At last we had penetrated into the heart of the Ingagi country—where no white man had ever been before.

Everywhere there were strange sounds, mysterious rustlings of the underbrush; chattering that seemed both human and animal.

We were soon to be thrilled by what met our gaze—a company of women, unclothed, apparently living like animals, shy as reedbucks and fleet as antelopes.

\* \* \* \* \*

In the background, you will see a giant Ingagi accompanying the women.

Dimly like figures from a nightmare, they stole through the forest while we watched, hardly daring to breathe.

\* \* \* \* \*

One had a child hugged to her breast—a strange looking child, seemingly more ape than human.

We wanted this giant specimen—alive, if possible.

\* \* \* \* \*

We followed him to his cave.

Into the dense underbrush we penetrated, expecting at any moment that the gorilla or some of its companions would pounce upon us.

At last, the animal vanished into the cleft of the mountain, and we proceeded to smoke him out.

Three great apes made for the brush.

\* \* \* \* \*

Overcome by the fumes, the big Ingagi was easily netted, but holding him was another matter.

Maddened by our pursuit he charged us, upsetting the camera, almost destroying the amazing film record we had obtained. \* \* \*

That night, we heard strange sounds, coming from the nearby village. Tom-toms and wierd chantings; great bonfires illuminating the scene.

\* \* \* \* \*

To our amazement, he told us that this was the night the tribe sacrifices a woman to the Ingagi.

\* \* \* \* \*

In the early morning, with our cameras, we prepared to obtain pictures of whatever might take place. \* \* \*

And here is what we beheld.

We saw the woman seated on a log, apparently resigned to her fate. \* \* \*

The brute pounced upon her—she screamed like one possessed.

\* \* \* \* \*

The gorilla was dragging the woman through the thicket.

Twice Swayne attempted to shoot \* \* \* and at last he fired.

While the gorilla is seldom the aggressor, he was now being robbed of his legitimate prey, and was prepared to fight to the last ditch.

Dropping the woman, he came on with roars that seemed to make the very earth tremble.

\* \* \* \* \*

He weighed 602 pounds, stood six feet one and measured eight feet and four inches from the tip of the fingers of one hand to the tips of the other.

We will now show you the last strange vision we beheld, as we watched in the thicket where the fallen Ingagi lay. Out of the shadows there crept one of those queer half-human women, who gazed upon the dead monster—lifted its arms and let them fall again, seemingly unable to comprehend. Then, catching the click of the camera, she fled into the jungle.

PAR. 7. The said motion picture film "Ingagi" was made by respondents Nathaniel H. Spitzer, William Alexander, William Sydney Campbell, and Harold D. Smith, as described in paragraph 4 herein, and distributed in interstate commerce by respondent Congo Pictures, Ltd. Except for the scenes included in said film which were obtained from the film titled "Heart of Africa", and certain other authentic scenes of African exploration and travel obtained by the individual respondents from film libraries and other sources, the scenes in said film "Ingagi" purporting to be actual scenes taken in Africa on an exploration and big game hunting trip are in fact scenes taken in and about the city of Los Angeles, Calif., by said respondents, and added to said film to make it interesting and attractive to the public.

In offering the said motion picture film "Ingagi" for lease and distribution to be exhibited to the public in motion picture theaters throughout the United States, and in the advertising copy and other advertising literature prepared and supplied by respondents for the purpose of attracting the patronage of the general public, as well as in the sound lecture accompanying said film, said respondents claimed that all of said film "Ingagi" was an authentic picturization of an exploration and big game hunting trip in Africa, and that all of the scenes included in said film were pictures of happenings and events on said trip, and offered the said film as a true and authentic record of said trip without in any way advising the motion picture theater exhibitors and the public that many of the scenes included in said film were made in and about the city of Los Angeles, State of California, and that no such expedition into Africa was ever made.

PAR. 8. The statements and representations made by respondents in the pictures, newspaper reading matter, display advertising, and other advertising literature, and in the sound lecture accompanying the motion picture film "Ingagi", excerpts from which are set forth in paragraphs 5 and 6 hereinabove, and other statements and representations of similar import, are false, deceptive, and misleading, because the actual and true facts regarding certain scenes included in said film "Ingagi" are as follows:

The word "Ingagi" is represented as meaning "gorilla" in the African language. There is no such word in any written dictionary of any African language, and the word for "gorilla" as given in said dictionaries is entirely different from said word "Ingagi".

Sir Hubert Winstead, F.A.S., F.R.G.S., who is represented as leading the expedition on which said film was made, and Capt. Daniel Swayne, who is represented as being an American hunter and collector of museum specimens, who accompanied him, are fictitious

persons who do not exist in fact. No expedition headed by such persons on which pictures were made ever took place.

The lion shown in the film as attacking the camera man and being killed is a trained lion captive in Hollywood, which is often used in motion pictures.

Many of the jungle scenes are photographed in a zoo in Los Angeles, and California pepper trees are shown in certain scenes of the film, said trees not being found in Africa.

The armadillo shown in the picture is a native of South America and is never found in Africa; the orang-utans represented as gorillas are natives of Borneo and are never found in Africa. Certain other animals are represented as being native to Africa but are in fact never found there, but only in Asia.

The animal claimed to be "new to science", and called in the film "tortadillo", because of its resemblance to an armadillo and a tortoise, is a turtle with wings, scales and a long tail glued on to it.

The so-called "pygmies" claimed to be shown in their native environment are not pygmies at all, but are negro children from 5 to 10 years in age, living in Los Angeles, and procured by respondents for the picture.

The native woman represented as being a sacrifice by her tribe to the gorillas, is a negro woman living in Los Angeles, and who was procured by respondents for the making of the picture and is not a native African woman.

The people represented as "strange creatures apparently half-human and half-ape" are negroes living in Los Angeles and made up for the purpose of the picture.

The custom of a native tribe in sacrificing a woman each year to the gorillas, and the scenes depicting the carrying away of the woman by a gorilla, are all fictitious and faked scenes. They were taken in Hollywood, Calif., by the respondents and the negro woman and other persons in the scenes are not natives, but are actors or persons obtained for and acting the parts in said scenes. The gorilla in said scenes is a man dressed in a gorilla skin.

The representation that queer children were found "that seemed to be the offspring of some unholy alliance" is false because no such offspring in fact exist.

PAR. 9. On or about December 1, 1930, and January 1, 1931, respondents made various changes in the sound lecture incorporated in said film "Ingagi", in the advertising copy and other advertising literature used in connection with said film whereby respondents assert that objectionable scenes were eliminated and that the public was

advised that the scenes showing the pygmies and the great apes were legends which were created and added to the film for their dramatic effect. Respondents further assert that the said film "Ingagi" with the modifications, additions, and alterations so made was passed by the censorship authorities of the State of New York on or about February 1, 1931, and that said modified film was licensed for exhibition by said censorship authorities. Respondents also state that the said film "Ingagi" is not now being exhibited in any motion-picture theater in the United States in either its original or revised form and has not been so exhibited for many months.

PAR. 10. Respondent's above described motion-picture film "Ingagi" has not purported to depict, and the reproduction of oral matter accompanying said picture has not purported to describe, fiction, but instead the supposed results of an expedition for travel, exploration and scientific investigation. Respondents have made representations of fact with respect to the personnel, character and results of said supposed scientific expedition. These representations are false and were made by respondents with the purpose and the effect of misleading prospective and actual attendants at public exhibitions of respondents' motion picture. The effect of said false, deceptive, and misleading representations in advertising and other publicity literature in connection with the leasing and distribution in interstate commerce of their said motion-picture film "Ingagi" was to induce exhibitors to lease and exhibit to the public said motion picture, to induce persons to attend exhibitions of the respondents' picture who would not otherwise have attended the same, and to mislead and deceive the public into paying money for admission to the various theaters in which said motion picture was being exhibited in the erroneous belief that said motion picture was a true and authentic pictorial record of an actual expedition in Africa, participated in by the several persons alleged by respondents to have made said expedition, and that the scenes set forth in said motion picture were pictures of actual animals and persons taken in Africa, when such was not the fact. The said false, deceptive, and misleading statements and representations so made by respondents have had the effect of diverting trade to respondents and their lessees from competing producers or lessors of motion pictures, and their lessees or exhibitors exhibiting their pictures. The circumstances under which respondents have discontinued the leasing of their said motion-picture film "Ingagi" does not afford sufficient assurance that respondents will not hereafter make false and misleading representations as to any motion-picture film or films, and the Commission deems it in the public interest to issue an order to cease and desist herein.



## CONCLUSION

The acts and practices of respondents, under the conditions and circumstances set forth above, have the tendency to discredit and cause the public to lose confidence in travel and educational motion pictures, to the detriment and injury of competitors selling such motion pictures in interstate commerce by means of truthful representations.

The acts and practices of respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors, and 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 heard by the Commission upon the complaint of the Commission, the answer of the respondents, and stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its 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 respondent, Congo Pictures, Ltd., its officers, agents, representatives, and employees, and respondents Nathaniel H. Spitzer, individually; William Alexander, individually; William Sydney Campbell, individually; and Harold D. Smith, individually, and each and all of said respondents, in connection with the leasing and distribution of the motion picture film "Ingagi" in commerce among the several States of the United States or in the District of Columbia, or in connection with the leasing and distribution in interstate commerce of any other film or films of a supposed scientific, educational, or travel character, or any film purporting to present facts as contrasted with fiction, cease and desist from representing in advertising, or in motion-picture films, or in any other manner, directly or indirectly:

- (1) That a motion-picture film is a true and authentic pictorial record of an expedition in Africa, or any other country, unless all of the scenes incorporated in said film were actually made in Africa, or such other country.

(2) That all scenes incorporated in a motion-picture film of travel in Africa, or any other country, are pictures actually taken in Africa, or such other country, when such is not the fact.

(3) That a motion-picture film is a true and actual representation of habits and customs of races, tribes or communities of human beings, when in fact the pictures depicting such habits and customs are entirely fictional, were not taken in the country where such races, tribes or communities live, and no such habits and customs are practiced by such races, tribes or communities of human beings.

(4) That the scenes incorporated in a motion-picture film depict actual and true events and happenings, in foreign countries or among foreign peoples, when in fact such scenes are entirely fictional, and were not made in such foreign countries or among such foreign peoples.

(5) That a motion-picture film containing unusual and strange creatures, events and happenings is a true, actual and authentic representation of such creatures, events and happenings, when in fact some or all of such scenes are fictional.

(6) That a motion-picture film, or oral statements accompanying the presentation of such film, was made by certain named persons when no such persons in fact exist, or when said named persons did not do as represented.

(7) That pictures of gorillas are shown in a motion-picture film when no pictures of such animals are in fact incorporated in said film.

(8) That human beings dressed in animal skins are the actual animals they are made to portray and represent.

(9) That trained and tamed wild animals are wild animals, pictures of which were taken in their natural habitat and in a wild state.

(10) That a fictitious animal is an animal of a new species never before discovered, or that a fictitious animal is an actual animal newly discovered.

(11) That wild animals which are not native to, and do not have their habitat in, Africa were photographed in their natural state in Africa.

(12) That actors and other persons made-up to simulate natives of Africa, or any other country, are actual natives of Africa, or such other country, pictures of whom were taken in their native country.

## Order

(13) That a motion-picture film contains scenes showing pygmies and other natives of Africa, when in fact the alleged pygmies shown, and many of the other purported natives, are actors or other persons made-up to simulate such natives.

(14) That a motion-picture film purporting to be a true and authentic picture of travel in foreign countries is a true and actual pictorial record of travel in such foreign countries without advising the public that many of the scenes contained therein are entirely fictional, and were not taken in such foreign country.

*It is further ordered,* That respondents shall within 60 days from the date of the service upon them 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.

IN THE MATTER OF  
**THERONOID, INC., THERONOID CORPORATION, PHILIP  
 ILLSLEY, J. ROY OWENS, AND J. N. WATSON**

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

*Docket 1865. Complaint, Mar. 10, 1931<sup>1</sup>—Decision, Apr. 8, 1933*

Where two corporations, engaged or interested in the sale of (a) an electric device of asserted therapeutic value which (1) consisted of a coil of wire in a belt-like container; and was designed for (2) attachment to the ordinary house lighting current, and (3) use by the individual or patient through placing the same, but without conductive contact, over or around his person, for the therapeutic benefit assertedly resulting from the electromagnetic field created; together with (b) a test coil or closed circuit, and small electrical lamp, which under a principle long known, lights, when placed in close juxtaposition to the belt in operation; and three individuals interested through stock ownership, or otherwise in device in question; in promoting sale of said article or so-called "Theronoid", through broadcasting, pamphlets, and advertising.

Represented same as a beneficial therapeutic agent in the aid, relief, prevention or cure of some twenty-one diseases including arthritis, diabetes, heart trouble, indigestion, nervous disorders, neuritis, rheumatism and high-blood pressure, making such statements as "thousands of homes all over the U.S. have been made happier, thousands of people are today useful citizens in good health instead of wrecks of humanity because of electro-magnetism and Theronoid, \* \* \* whether you are 7 or 77 \* \* \* electro-magnetism will increase the flow of your life forces, speed up the process of oxidation and get rid of the poisons you have filled yourself with". "You men and women who live each hour in pain \* \* \* and wish in your inmost hearts for eternal rest, accept my challenge that you can be released from your bonds and again find not only relief but also real normal health", "\* \* \* is proving itself daily in thousands of cases throughout the United States to be of extreme benefit in conditions of chronic diseases \* \* \*. Offers a way of using the natural force of electro-magnetism in the treatment of many diseases \* \* \*. If you have been suffering for weeks, months, or possibly years, and have been unable to obtain relief, now is not the time to despair or give up hope; try again something that has helped others for exactly your same condition. You may have tried everything in a vain endeavor to secure your health, but until you try electro-magnetism you cannot know how really well you can be", and other statements of similar tenor;

Notwithstanding the fact that magnetic induction with actual tests of said product and other similar devices, together with the most elaborate tests of application of electro-magnetic fields to the animal body without conductivity, showed no effect produced, and the nature and effect of the physical forces brought into existence by attaching the device in question to the

<sup>1</sup> Amended.

## Complaint

ordinary house lighting alternating current are such that it is of no benefit in the treatment, aid, prevention or cure of any disease, acute or chronic, or any other pathological condition, its use, as directed, cannot and does not stimulate metabolism, speed up the process of oxidation, increase elimination, electrify or magnetise the person exposed, or "increase the flow of life forces" and good health, and it cannot be and is not in any way of therapeutic benefit to the purchaser or user thereof, nor calculated or likely to aid in the prevention, treatment or cure of any human ailment, except in cases where the user is so deceived by misrepresentations that a purely psychological benefit is produced;

With effect of misleading and deceiving prospective dealer and other purchasers to whom the advertising data, radio broadcasts and pamphlets supplied to dealer purchasers for redistribution were passed on, and with the tendency so to mislead and deceive such various purchasers, who bought device in question in reliance upon truth of aforesaid representations and actuated by the erroneous belief that use of said device constituted a therapeutic aid in the prevention, treatment, relief and cure of various and sundry ailments of the human body, and with effect of diverting trade from competitor wholesale and retail dealers in sale of electrical appliances designed for attachment to ordinary alternating house lighting current, and of value in treatment, prevention, and cure of many human ailments, and of thereby injuring said competitors and deceiving a substantial portion of the public, and with a tendency so to divert trade:

*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.

*McKercher & Link*, of New York City, for Theronoid, Inc., and (along with *Mr. John W. Kern*, of Indianapolis), for J. N. Watson.

*Mr. John W. Kern* for J. Roy Owens, and, together with *Marsh & Rogers*, of Washington, D.C., for Theronoid Corporation and Philip Illsley.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Theronoid Corporation, organized under the laws of Ohio,<sup>2</sup> respondent Philip Illsley, of Los Angeles, president and principal stock owner of said corporation, respondent Theronoid, Inc., a Delaware Corporation with principal office in New York City, and respondent J. Roy Owens, its president and general manager, and respondent J. N. Watson, its secretary and treasurer (and directors thereof), variously interested or engaged in the sale of an electromagnetic device of asserted therapeutic value, with advertising falsely or misleadingly as to nature and results of product, and mis-

<sup>2</sup> Originally organized with the corporate name of Ionaco Office, Inc.

representing in said respect, 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, interested and engaged<sup>3</sup> in the sale of aforesaid device or so-called "theronoid" and with offices in New York, Philadelphia, and Detroit, and Windsor, Ontario, represent that through electro-magnetism induced by an alternating current by use of said theronoid, customers suffering from some twenty-one ailments, including asthma, heart trouble, rheumatism, stomach trouble, and high blood pressure,<sup>4</sup> obtain relief, making sweeping representations to that effect in advertisements and representations in newspapers, circulars, over the radio and in various other ways.<sup>5</sup>

Said device of respondents, as alleged, is without "remedial or therapeutic value in the disorders described \* \* \*, and the representations as to the curative value thereof made by respondents are and have been false and misleading" and "the effect of respondents' methods and practices hereinabove described is to mislead individuals who desire to obtain relief from various ailments into the belief that respondents' theronoids provide means for their benefit and relief, whereas this belief is unfounded and erroneous, and respondents' advertising and other written and oral representations are deceptive, misleading and false", and said alleged "acts and practices of respondents above alleged 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."

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, on August 22, 1930, the Federal Trade Commission issued and shortly thereafter served a complaint upon the respondent Theronoid, Inc., a Delaware corporation, Theronoid Corporation, an Ohio Corporation, Philip Illsley, J. Roy Owens, and J. N. Watson, charging each of them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

<sup>3</sup> As alleged in the complaint respondent Theronoid, Inc., is the transferee of the property and rights in said Theronoid, previously vested in respondent Theronoid Corporation, subject to certain reversionary rights in the latter, contingent upon the former's failing to make certain deferred payments upon the purchase price.

<sup>4</sup> List of ailments alleged in the complaint may be found *infra*, in Findings at p. 306.

<sup>5</sup> Statements and representations alleged and quoted in the complaint in this connection may be found set forth in the Findings *infra* at p. 306.

Respondents answered and thereafter the Commission issued and served an amended complaint on March 10, 1931, to which the respondents Theronoid, Inc., J. Roy Owens, and J. N. Watson, jointly, and respondents Theronoid Corporation and Philip Illsley, jointly, made answer. The last two named respondents also moved to dismiss the amended complaint and said motion was overruled by the Commission without prejudice to a renewal thereof at the final hearing. Thereupon hearings were had and evidence was introduced upon behalf of the Commission before a trial examiner of the Commission thereunto duly appointed. Upon completion of the taking of testimony for the Commission the said trial examiner was directed to take testimony and evidence on behalf of the said respondents, but no respondent offered any testimony or evidence, whereupon the trial examiner filed his findings of fact herein.

Thereupon this proceeding came on for consideration upon the record, and the brief and oral argument of counsel for the Commission. No brief was filed on behalf of respondents, none of whom appeared at the argument except the respondent J. Roy Owens, who then and there moved that the complaint as to him be dismissed. The Commission having duly considered these matters 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. Since long prior to 1928 the respondent Philip Illsley was engaged in the interstate sale of an electro-magnetic belt of alleged therapeutic properties which was known as the "Ionaco". In March, 1928, he caused to be organized under the laws of the State of Ohio, a corporation known as "Cleveland Ionaco Office" and to it transferred said business, both wholesale and retail, and the following September the company changed its name to "Theronoid Corporation", one of these respondents.

Philip Illsley is and has been president of Theronoid Corporation and owner of the stock since its organization. Until the early part of April, 1930, respondent Illsley actively directed its affairs, concurrently engaging in the competitive sale of the same belt individually through one or more of his own offices operated for that purpose in the cities of Cleveland, Ohio; Detroit, Mich.; New York, N.Y.; Trenton, N.J.; Philadelphia, Pa.; Washington, D.C., and Windsor, Ontario. These sales offices were uniformly designated by the name "Theronoid" coupled with the name of the city where situated, as "Theronoid of Detroit", "Theronoid of Washington", etc. During the same period respondent Theronoid Cor-

poration sold such belts in Pennsylvania and elsewhere than the State of Ohio. On January 20, 1931, Theronoid Corporation changed its name to "Illsley Holding Corporation", and under that name at the time of the hearings was still actively engaged in such business.

In April, 1930, respondent Theronoid Corporation transferred its assets to one Frank J. Stoltz and respondent Philip Illsley, joining in the transaction, conveyed his personal ownership of the Theronoid trade mark and his various sales offices mentioned. On or about April 8, 1930, the said Frank J. Stoltz caused to be organized under the laws of the State of Delaware the respondent Theronoid, Inc., having 100,000 shares of no-par common stock and principal office at 522 Fifth Avenue, New York, N.Y. Respondent J. Roy Owens, is president and general manager and respondent J. N. Watson secretary and treasurer of Theronoid, Inc., both being directors therein. To Theronoid, Inc., were transferred the property and rights previously transferred by Theronoid Corporation and Illsley to Mr. Stoltz.

PAR. 2. The Theronoid Corporation and Philip Illsley from the commencement of their business, as aforesaid, and Theronoid, Inc., J. Roy Owens, and J. N. Watson, since April 8, 1930, have been and are now engaged in the business of offering and selling to the public, for a stated money consideration, a device consisting of a coil of wire or solenoid in a container intended to be placed around patients whereby, by means of an alternating electric current, an electro-magnetic field of therapeutic value is said by respondents to be created to the great benefit of customers of respondent using the said solenoid. The said solenoid has been designated by respondents and has been known to them and their customers as Theronoid. The said theronoids have been and are manufactured for the said corporate respondents, respectively, during the said periods of control within the times above described by the Anylite Electric Company of Fort Wayne, Ind., under contract made with Theronoid Corporation and by it assigned to Theronoid, Inc., and by said respondents, or at their order, transported to purchasers thereof from the State of Indiana to the office of respondent Theronoid, Inc., in New York City and also direct to respondents' customers in Ohio, New Jersey, Pennsylvania, and various other States of the United States. The evidence shows that prior to the sale of the business to Theronoid, Inc., respondent Theronoid Corporation and respondent Illsley paid office rent, salaries to managers and broadcasters and other expenses and made contracts with newspapers and radio stations and authorized the same to be made in States other than the State of Ohio, the location of their principal



office. These respondents also caused shipments to be made from the States of Ohio and Indiana to other States of the United States. After April 8, 1930, the same methods as herein set forth were continued by Theronoid, Inc. "Theronoid of Washington" in the District of Columbia was owned by the respondent Illsley, but Theronoid Corporation paid the office rent and the salaries of the broadcasters and other employees, respondent Illsley being in charge. These appliances were sold and delivered from this office into Maryland, Pennsylvania, Virginia, and elsewhere outside as well as inside of the District of Columbia. After Theronoid, Inc., succeeded to the business the orders for the devices went to New York City instead of Cleveland, the latter company paying the salaries and arranging for the advertising by radio, newspapers, pamphlets, and otherwise.

"Theronoid of New York" was managed prior to the sale to respondent Theronoid, Inc., by respondent J. Roy Owens, who was paid by Philip Illsley for his services. Illsley owned this office and supervised the business. Sales were made therefrom by respondent Illsley, by Theronoid, Inc., by J. Roy Owens with the active participation of respondent J. N. Watson and appliances shipped from the New York office to New Jersey. Theronoid, Inc., has now discontinued the District of Columbia office, but did pay salaries in this and in the other offices formerly owned by the respondent Illsley until dealers were appointed.

Upon consideration of all the evidence, the Commission finds that the respondents jointly and severally have engaged in interstate commerce in the sale and distribution of said electrical appliances, shipped from the manufacturer at Fort Wayne, Ind., upon orders from Theronoid Corporation at Cleveland, Ohio, and upon orders from J. Roy Owens and Theronoid, Inc., at New York, N.Y., into and through the various States of the United States to some 40 independent dealers located in some 25 different States and the District of Columbia, as well as to many ultimate purchasers. These dealers buy the device at a fixed price and sell to customers on their own account and arrangements; Theronoid, Inc., through the active direction and management of J. Roy Owens cooperating with these dealers, furnishing the radio talks, pamphlets, testimonials and other literature, and in many cases paying for extensive broadcasts of radio advertising. By means of this aid and cooperation the said dealers resell these appliances not only in the exclusive sales territories assigned to them, but to and through various other States and Territories. Exclusive sales territories were usually purchased by the dealer from respondent Theronoid, Inc., upon a down

payment and installments to be paid upon each belt by said dealer purchased, which purchase price was transmitted to the manufacturer at Fort Wayne, Ind., and an accounting and settlement had at periodic intervals by and between the said manufacturer and Theronoid, Inc., through the agency of respondent J. Roy Owens and respondent J. N. Watson. The original records of the said factories show that during the years 1930 and 1931 in the aforesaid manner, respondents Theronoid Corporation and Theronoid, Inc., with the active supervision and assistance of respondents J. Roy Owens, Philip Illsley, and J. N. Watson, have caused to be sold and shipped to their dealers and other customers a total of 15,599 such appliances at an average retail price to the ultimate consumer of \$75.

PAR. 3. In the course and conduct of their aforesaid business, the respondents are in direct and substantial competition with other individuals, partnerships, and corporations engaged in the business of offering and selling in interstate commerce, other electrical devices and appliances which are alleged to and do have some therapeutic value. Representatives of many such competitors testified and exhibits were received showing such appliances and their manner of use and value, and showing that a large interstate business in such devices is being carried on for similar and identical purposes, and in the same general territory as that in which respondents have sold the Theronoid. There are a great many physical therapy devices and appliances sold and used throughout the United States, some of which operate electrically by attachment to the ordinary alternating 110 volt, 60 cycle, house lighting current; static machines, high frequency machines, various kinds of therapeutic lamps, sun rays, X-rays, devices for giving galvanic, faradic and sinusoidal currents; telatherms for cautery and quartz mercury vapor lamps, all of which are sold in competition with respondents' Theronoid for the purpose of aiding in the treatment, prevention or cure of various physical ailments.

PAR. 4. The Theronoid is an electrical appliance or device consisting of a coil of wire, or solenoid, in a container resembling a very large belt. It has an imitation leather covering and is used by attaching it to the ordinary alternating electric current of 110 to 120 volts, 60 cycles. It is then placed around or over some portion of the body, but without contact in the conductive sense. More technically speaking, such appliances consist of a low frequency coreless solenoid containing 612 turns of enameled aluminous wire, 0.032 of an inch in diameter, the windings being arranged in 12 layers, each insulated from the next by brown paper, the inside stiffened and wrapped with a strip of impregnated burlap and the whole assembly

being covered with padding. There is a tap connection and toggle-switch dividing the coils into two windings having 460 and 152 turns, respectively. These toggle-switches are labeled "off-on" and "high-low". When set at "low" the 152 turn winding is closed upon itself permitting the circulation of such current as may be induced in it by transformer action from the 460 turn winding. When attached to an alternating 110 to 120 volt, 60 cycle current such as ordinarily supplies residence lighting it produces a magnetic field of a frequency of 120, and an intensity of 22 Gauss, when the switch is set at high, which roughly speaking, is a magnetic induction strength 50 to 100 times as powerful as that force which causes an ordinary compass needle to point northward. The evidence shows that magnetic fields of the intensity of 10,000 Gauss are common and that experiments have disclosed that no sensations have been produced in a field of an intensity of less than 1,000 Gauss.

Commencing January 16, 1932, the Fort Wayne manufacturer began shipping, under respondents' orders a Theronoid belt "improved" by a switch-box which can result in 3 different field strengths instead of 2 as formerly. This belt can be made to operate with both a stronger and a weaker magnetic field than the one heretofore described. The strongest magnetic field, however, which can be created by this "improvement" is not twice as strong as the field formerly created, according to the testimony of the inventor of the "improvement".

Together with each Theronoid sold, comes a smaller closed circuit of wire also wrapped in artificial leather, to which circuit is attached a two candle power electrical lamp. This is known as a test coil. When placed in close juxtaposition to the belt while the latter is attached to an alternating 120 volt, 60 cycle, alternating current, the lamp lights, by reason of the induced alternating current set up therein due to its exposure to the magnetic flux of the belt.

The discovery of the principal involved in this phenomenon (lighting an electric light with no visible connection) was attributed to Michael Faraday, who found, in 1831, that if an alternating current were passed through a coil of wire and a second coil were placed within or without that first coil with no physical connection whatever, that there would be set up in the secondary coil a so-called induced current—in other words, there would be a current flowing in the closed circuit of the second coil.

PAR. 5. Together with each device sold was a leaflet of instructions, recommending that the patient expose his body to the aforesaid magnetic field produced by the Theronoid for intervals of 1 to 15

## Findings

17 F.T.C.

minutes 2 to 4 times daily. The respondents, by means of newspaper advertisements, copies of which were received in evidence as Commission's exhibits; by radio broadcasts made by various agents, servants, and employees over 19 radio broadcasting stations made with the purpose and effect of achieving sales of the Theronoid; and by the distribution of pamphlets and journals and testimonials, have represented and do represent to purchasers and prospective purchasers that the use of the said device or appliance in the manner aforesaid is a beneficial therapeutic agent in the aid, relief, prevention or cure of the following diseases, namely: asthma, arthritis, bladder trouble, bronchitis, catarrh, constipation, diabetes, eczema, heart trouble, hemorrhoids, indigestion, insomnia, lumbago, nervous disorders, neuralgia, neuritis, rheumatism, sciatica, stomach trouble, varicose veins, and high blood pressure. Representations by respondents to such effect have been made through advertising in newspapers, over radio, by circular matter, bulletins, tabloid sheets, oral representations and in various other ways. Among other statements made by respondents in the course of their sales efforts are the following:

We do not have to paint the lily or gild the gold piece, for the *Truth about Theronoid is good enough*. Thousands of homes all over the U.S. have been made happier, thousands of people are today useful citizens in good health instead of wrecks of humanity because of Electro-magnetism and the Theronoid. \* \* \*

It makes no difference whether you are 7 or 77 years of age, or any number of years between, Electro-magnetism will increase the flow of your life forces, speed up the process of oxidation and get rid of the poisons you have filled yourself with by irregular living, bad hygienic habits, overwork and overworry. \* \* \*

You men and women who live each hour in pain, find each day an added burden, wonder how you are going to have the courage to pull through another month, and wish in your inmost hearts for eternal rest, accept my challenge that you can be released from your bonds and again find not only relief but also real normal health. Do you think that I could possibly talk to you in this manner unless I knew from actual results that these things are possible and probable? I am here telling you because I have seen, talked to and rejoiced with men and women who have been in as bad condition as any of you are at this moment.

Anyone who has been ill for years, suffered terrific agonies, and never found any permanent relief, should really consider the Theronoid. The very naturalness and reasonableness of this method of treatment for any diseases resulting from a toxic condition should appeal to chronic sufferers.

We are glad to have you investigate, because it is your disease you have to deal with and what anybody guesses about it will, after all, not help you one particle. We know what the Theronoid will do in the great majority of cases because of what the Theronoid has done in thousands of homes all over this land. These oftentimes amazing, sometimes seemingly almost miraculous restorations to health are not mere happenings or isolated examples.

I want to help you to a realization \* \* \* that electro-magnetism can benefit the majority of people who are chronically ill and about willing to give up trying to regain their health.

This action of the Theronoid is established beyond all controversy by scientific proof and by the thousands of recoveries from chronic types of diseases, such as arthritis, paralysis following apoplexy, neuritis, rheumatism—just to mention a few.

Electro-magnetism has been found to be very effective in stimulating all natural functions to bring about normal conditions in many chronic ailments, a few of which are enumerated below. (There are enumerated below the 21 ailments named in the paragraph above.) If you suffer from some of these diseases, do not think that Theronoid, because of its wide range of recoveries in so many various diseases is a cure-all—for it is not. It stimulates normal function by using natural agents.

Many thousands of people are regaining their health through using Theronoid, and if you have tried many things and have failed, investigate the Theronoid for yourself. Vital and robust good health can be yours through the application of a natural force—electro-magnetism.

The Theronoid invites everyone with any of the following ailments a return to health. Visit the Theronoid office located nearest you and try it. It will prove its efficacy in your own case. There is no charge or obligation for the use of Theronoid in our offices, so avail yourself of this opportunity to see yourself return to health. *Excellent results have been reported in the following diseases.* (The same disorders are listed which are named in this paragraph above.)

Theronoid is proving itself daily in thousands of cases throughout the United States to be of extreme benefit in conditions of chronic diseases. Many thousands of people who have been hopeless sufferers with supposedly chronic diseases have regained their health and have secured radiant vitality. The Theronoid offers a way of using the natural force of electro-magnetism in the treatment of many diseases. It has been used throughout the United States with great success. Hundreds right here in Philadelphia acclaim its efficacy in their own condition. If you have been suffering for weeks, months, or possibly years, and have been unable to obtain relief, now is not the time to despair or give up hope; try again something that has helped others who have exactly your same condition. You may have tried everything in a vain endeavor to secure your health, but until you try electro-magnetism you cannot know how really well you can be.

PAR. 6. Prospective dealers and other purchasers, believing and relying upon the truth of the aforesaid representations, have been and are by respondents deceived into believing that the use, as directed, of the device known as the Theronoid will be of remedial or therapeutic value in the aid, relief, prevention, or cure of the above and other ailments, and will stimulate metabolism and oxidation, thereby increasing elimination of toxic conditions in the human body, electrify or magnetize the person exposed and “increase the flow of life forces and good health”.

The clear, convincing, and undisputed testimony of many disinterested scientists, eminent in their respective fields of physics, bio-

physics, physiology, medicine, surgery, biology, neuro-physiology, psycho-biology, electro-therapy, physical therapy, electrical engineering, magnetics, and specialists in nervous and mental diseases supports the conclusion that such belief is false. The testimony of twenty-two such witnesses, based upon their observation, experience, research in their particular fields and, in the case of eight of such witnesses, based in part at least upon actual tests of the Theronoid itself or of the Ionaco, which device was similar in principle and construction to the Theronoid, is unqualifiedly to the effect that human exposure to the magnetic field of the Theronoid either in the strength produced by the device prior to, or after the so-called improvement therein dating January 16, 1932, as aforesaid, cannot and will not be of any benefit whatsoever in the treatment, relief, prevention, or cure of any pathological condition.

The evidence of record shows only two effects possible through exposure, without any physical conductive connection of the patient in the circuit, to the electro-magnetic field of the strength, frequency and intensity produced by this device when attached to the ordinary house lighting current. Those effects are—eddy currents and hysteretic loss. The testimony shows that eddy currents are currents going around and around inside an object without leaving it, circulating similarly to eddy currents in a creek or bay. They are waste currents, not useful, but induce heat proportionately to their amount and the resistance of the object in which they circulate. No appreciable eddy currents can be set up by a magnetic field of such low frequency as that produced by the Theronoid. "Hysteretic loss" was made clear by the testimony of technical experts in substance as follows: When a material having magnetic qualities such as iron is placed in a magnetic field supplied by direct current the iron is magnetized. If it is put in a field supplied by an alternating current it is not magnetized excepting temporarily, being magnetized first in one direction and then in the other due to the alternations of the current directing the lines of force alternately towards the North and the South poles of the said magnet. The theory is that in magnetic materials there are molecular magnets which all turn in one direction when the lines of force point that way and then they have a tendency to turn back in the other direction when the lines of force reverse upon themselves. The loss of energy due to such molecular change or disturbance manifests itself in heat. This is known as hysteretic loss. The only manifestation of either eddy currents or hysteretic loss is heat.

But there can be no hysteretic loss upon or in an object not possessing the property of retaining magnetism or residual magnetism,

and since any animal body has the same permeability approximately as that of air, it does not possess such a property; and further since the amount of heat that may be generated in an animal body by such eddy currents as the Theronoid is capable of producing is infinitesimally small, the Commission finds that the nature and effect of the physical forces brought into existence by attaching this device to the ordinary house lighting alternating current are such that it is impossible for it to be and that it is not of benefit in the treatment, aid, prevention, or cure of any disease acute or chronic, or any other pathological condition; that its use as directed, cannot and does not stimulate metabolism, speed up the processes of oxidation, increase elimination, electrify or magnetize the person exposed, "increase the flow of life forces" and good health, and cannot be nor is in any other way of therapeutic benefit to the purchaser or user thereof. Actual tests of this and similar devices together with the most elaborate tests of the application without conductivity of electromagnetic fields to the animal body, have shown that no effect was produced. Twenty-five lay purchasers of the device, all of whom were people in the average walk of life and each one of whom was suffering from some disease or ailment, testified concerning the purchase and use of it according to directions over divers periods of time. In the majority of such instances such sales had been induced by advertising over radio broadcasting stations as aforesaid. The testimony of each of these witnesses unqualifiedly condemned such device as of no benefit.

Dr. Frank H. Krusen, a physician and specialist in physical therapeutics, assistant dean of Temple University School of Medicine, and director of its department of physiotherapy, testified that its use in accordance with the directions would have no beneficial effect in the prevention, treatment or cure of any of the diseases mentioned.

Dr. Detlev W. Bronk, professor of biophysics of the University of Pennsylvania and specialist in electro-physiology, member of the National Research Counsel of Cambridge and London, testified that such use would have no biological effect if 500 times the strength of Theronoid.

Dr. Frederick J. Peterson, specialist in nervous and mental diseases, practicing physician since 1888 and for 25 years connected with the nervous and mental department of Columbia University, conducted experiments with a magnetic field 27,778 times as strong as that of the earth horizontal component which alines the compass needle, and testified that the use of this device would have no effect whatever upon a patient suffering from any physiological symptom.

Dr. Norman Edwin Titus, fellow of the Academy of Medicine, fellow of the French Academy of Electrology and associated surgeon and director of physical therapy of Columbia University, testified that "if any patients changed in any way from use of Theronoid the change came just from the mental attitude, no real effect".

Dr. Richard Kovacs, specialist in physical-therapy and electro-therapeutics, a graduate of the University of Budapest, and visiting physical therapist to several New York hospitals, said that the use of Theronoid would "do about as much good as the magnetic field in a subway—that it amounts to nothing in affecting the human body".

Dr. Horatio Burt Williams, director and dean of the department of physiology of Columbia University who is a biologist, electro-physicist and bio-physicist, testified that "the only known effects such use could have would be to set up small currents producing theoretical heat less than one two-thousandths of the heat required by the human body under normal conditions—no effect except psychological—like a rabbit's foot".

Dr. Kenneth Stewart Cole, assistant professor of physiology, Columbia University, student of low speed electrons, assistant bio-physicist and who experimented in electromagnetic fields in collaboration with Dr. Williams, said that the eddy currents produced were negligible with less than thirty-five one-thousandths of a watt energy, and that one hour's continuous application of the Theronoid in the manner directed would produce as much heat as one teaspoon full of hot water.

Francis B. Silsbee, principal scientist of the United States Bureau of Standards, M.S., in electrical engineering, Massachusetts Institute of Technology, Ph.D., in physics, Harvard University, and for 20 years assigned by the Bureau of Standards to test electrical instruments and miscellaneous apparatus, testified that the effect of the theoretical heat produced by the use of Theronoid was equivalent to one one-millionth of a kilogram calory or combustion of one-millionth of an ounce of starch.

Dr. Melvin F. Fischer, an electrical engineer, for 18 years assistant physicist in the U.S. Bureau of Standards, whose duties have been devising methods of magnetic measurements and studying related magnetic phenomena, magnetic field intensities and permeability—compared the heat produced from the use of Theronoid with the consumption of half a pinhead of coal, i.e., immeasurable.

Captain Hubert L. Nicholson of the Medical Corps, U.S. Army, assigned to Walter Reed General Hospital as officer in charge of the physio-therapy department; Dr. Winthrop M. Phelps, chief of the



orthopedic section in charge of the physical therapy department of the New Haven Hospital, Yale University; Dr. J. F. Fulton, sterling professor and chair of physiology of Yale University; and Dr. Walter Bradford Cannon for twenty-five years in the chair of physiology, Harvard University School of Medicine—all testified that the use of such device would have no effect whatsoever in preventing, treating or curing disease, and would have no effect therapeutic or otherwise.

Dr. Willis S. Peck, assistant director of the department of physical therapy in the Michigan University Hospital, was of the same opinion. Dr. J. W. Schereschewsky, medical director of the United States Public Health Service, engaged in cooperation with Harvard University in charge of cancer investigations and who for the past eight years has been experimenting with biological reactions caused by exposure without physical conductivity to electro-magnetic fields of ultra high frequency ranging from 10,000,000 to 400,000,000 cycles per second (as against Theronoid's frequency of 60 to 120 cycles per second), testified that the use of Theronoid would have no biological effect or reaction whatever.

Dr. Anton J. Carlson, chair of physiology, University of Chicago, member of American Federation of Experimental Biology, testified that the use of such a device not only was not beneficial but might be harmful in that if one limited himself to such therapy, known remedies might be neglected to his great detriment.

Dr. Kamil Schulhof, M.D., University of Prague, Bohemia, Czecho-Slovakia, physician and assistant clinical professor of medicine, Rush Medical College and the University of Chicago, specialist in internal medicine and metabolism, testified that the probable efficacy of the device in question is zero except as psycho-therapy in nerve disorders.

From a consideration of all the testimony the Commission finds that neither the solenoid belt or device, heretofore known as Theronoid nor any similar device or appliance designed or intended to operate through exposure of a human subject to a low-frequency alternating magnetic field, without any physical conductive connection of such subject in the circuit, has any physical therapeutic effect upon such subject, or is calculated or likely to aid in the prevention, treatment or cure of any human ailment, sickness or disease, except in cases where the user is so deceived by misrepresentations that a benefit purely psychological is produced.

PAR. 7. The foregoing false and misleading representations by respondents and each of them as hereinbefore set forth have a tendency to mislead and have misled and deceived prospective dealer and other purchasers, and the advertising data, radio broadcasts

and pamphlets supplied to such dealer purchasers for redistribution to ultimate purchasers have been passed on and have misled and deceived such ultimate purchasers, all of whom, relying upon the truth of such representations, and actuated by the erroneous belief that the use of the Theronoid device is a therapeutic aid in the prevention, treatment, relief and cure of various and sundry ailments in the human body, have purchased and do purchase from the respondents the said Theronoid belts. Such misleading and false representations have a tendency to, and do divert trade to respondents from competitors dealing, both wholesale and retail, in the sale of electrical appliances in interstate commerce, which appliances are designed for use by attachment to the ordinary alternating house lighting current, and which are of value in the treatment, prevention and cure of many human ailments, and which are offered for sale and sold in States and Territories co-extensive with those in which Theronoid is offered and sold. Hence the aforesaid methods and practices have injured and do injure such competitors and have deceived and do deceive a substantial portion of the public.

#### CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings have been and are to the prejudice of the public and of 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 answers of the several respondents thereto, the testimony taken and brief and oral argument of counsel for the Commission, counsel for none of respondents having filed brief or appeared for oral argument, except J. Roy Owens who then and there moved that the amended complaint as to him be dismissed, and the Commission having fully considered the record and made its findings as to the facts and its conclusion that respondents and each of them 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 motion of respondent, J. Roy Owens to dismiss the amended complaint herein as to him be, and the same is hereby, denied.

*It is further ordered,* That respondents, Theronoid, Inc., a Delaware corporation, Theronoid Corporation, an Ohio corporation, Philip Illsley, J. Roy Owens, and J. N. Watson, and the officers, directors, agents, representatives, servants, employees, and successors of each of them—in connection with the advertising, offering for sale, and sale, in interstate commerce or in the District of Columbia, of a solenoid belt or device, heretofore known as Theronoid, cease and desist from representing in any manner whatsoever that the said belt or device or any similar device or appliance designed or intended to operate through exposure of a human subject to a low-frequency alternating magnetic field, without any physical conductive connection of such subject in the circuit, has any physical therapeutic effect upon such subject, or that it is calculated or likely to aid in the prevention, treatment, or cure of any human ailment, sickness, or disease.

*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 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.

IN THE MATTER OF  
NANCY LEE INSTITUTE TRADING AS NANCY LEE AND  
AS MARY TITUS

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

*Docket 1996. Complaint, Jan. 18, 1932—Decision, Apr. 10, 1933*

Where a corporation engaged in the sale of a massage cream for the development of the bust; in advertising and describing its said product in periodicals, letters, circulars, booklets, purported testimonials and other trade literature, and through photographs purporting to be descriptive of the merits thereof,

- (a) Sold said product under the name "Nancy Lee Miracle Cream", and held out to purchasers and prospective purchasers in all letters and advertising matter dealing therewith that a woman named Nancy Lee was the manufacturer thereof and in personal charge of the sale of said product, and of correspondence with reference thereto, facts being business of the corporation, including all advertising and preparation of form letters was in charge of a man, said corporation's president, vice president, and principal stockholders were two men formerly engaged as partners in the sale of the product, and there was no Nancy Lee connected therewith, prior to action of said vice president in causing said name to be taken by his sister, who had no training as doctor, dietician or chemist, was charged with duty of sending out form letters of said corporation, and had no other connection with it other than that of a stenographer;
- (b) Represented that use of aforesaid cream would produce speedy, striking and impressive results, as specified in detail and otherwise, in the development and beautification of the bust of the user, through its action in replenishing or nourishing the glands or tissues and in other ways, as in said advertising and representations set forth, and constituted a scientific restorative, and employed photographs assertedly demonstrating such results, facts being that said cream was not a scientific preparation, had no other virtue than as a lubricant in massage, and any results to users were dependent upon the little mentioned or stressed diet, exercises, and treatments prescribed for user *following* purchase of product, and aforesaid photographs did not represent depictions of women who had employed and benefited by cream in question, but represented photographs selected by aforesaid corporation without knowledge of the person portrayed, and altered or not as deemed desirable to serve best their purpose as asserted demonstrations of the merit of the cream in question;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of said cream into believing said representations to be true, induce purchase thereof in such belief, and divert trade unfairly from competitors to it:

*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. E. J. Hornibrook* for the Commission.

*Mr. Harry Scheer*, 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, the Commission charged respondent, a New York corporation engaged in the sale of "Miracle Developing Cream" under the name of "Nancy Lee", and in the sale of "Dermo Cream" under the name "Mary Titus", and with principal place of business in New York City, with misrepresenting business identity, and advertising falsely or misleadingly in said respect, and as to qualities and results of product, and testimonials relating 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 aforesaid, represents in magazines and newspaper advertisements, and in circulars containing purported testimonials and pictures that its so-called "Miracle Developing Cream is sold by a woman—Nancy Lee—that the use of this cream increases the size of the breasts and assures rounded, fully developed, beautiful breasts, that its use will fill the contours of and increase the size of breasts from one to three inches and that it will restore withered breasts to normal size, that said pictures represent the size of the breasts before and after using said cream, many women have increased the size of their breasts by its use"; the facts being that said cream "is not sold by Nancy Lee or any other woman, nor is there a woman connected with the management of the said business of respondent; the use of Miracle Developing Cream does not and cannot increase the size of the breasts nor assure rounded or beautiful or fully developed breasts nor will it fill the contours of the breasts nor restore withered breasts to normal; that the purported testimonials of women to the effect that the breasts have been enlarged by the use of Miracle Developing Cream are not true and that the said pictures purporting to show enlargement of the breasts after using such cream are not true pictures."

Respondent further, as charged, falsely represents that its said "Dermo Cream is sold by a woman—Mary Titus—that its use will fill out the neck, chest, arms, legs, or any part of the body"; facts being that said cream "is not sold by Mary Titus or any other woman, nor is there a woman connected with the management of the said business of respondent; the use of "Dermo Cream" will not fill out the neck, chest, arms, legs or increase the size of any part of the human body."

Such false and misleading statements and representations, as alleged, "had and have the capacity and tendency to induce the pub-

lic to purchase and use respondent's said Miracle Developing Cream and Dermo Cream in the belief that said statements and representations made as to each of them are true and had and have the capacity and tendency unfairly to divert trade from said competitors to respondent"; 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, on the 18th day of January, A.D. 1932, issued and thereafter served its complaint against the respondent Nancy Lee Institute, a corporation trading as Nancy Lee, and as Mary Titus, 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 an answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence taken 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 its 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 New York with its principal office and place of business located in the city of New York, State of New York. It was so incorporated on the 18th day of August, 1930. Since the date of its incorporation it has traded under its corporate name and also under the name of Nancy Lee, but not under the name of Mary Titus.

Respondent is now and since the date of its incorporation has been engaged in the business of selling a massage cream which it designates as Nancy Lee Miracle Cream, and which it offers for sale as and represents to be efficacious as a bust developer. For two years prior to the date of incorporation of the respondent, this cream was sold as a bust developer by a copartnership, consisting of W. Harry Titus and Victor W. Titus, president and vice president, respectively, of respondent corporation and now the principal stockholders thereof. Victor W. Titus is the manager of respondent's said business.

The respondent's methods of sale are: It forms contact with its customers and prospective customers through magazine advertisements in which it is stated that upon the receipt of one dollar a large container of Nancy Lee Miracle Cream with instructions and free book in plain wrapper will be sent to the purchaser. Upon receipt of the dollar by respondent a three-fourths ounce jar of Nancy Lee Miracle Cream is sent to the purchaser. With this jar comes a little pamphlet containing some meager instructions as to massaging the breasts with the cream and a few suggestions as to diet and exercise. With this small container of Nancy Lee Miracle Cream is enclosed a statement that if the purchaser desires a seven ounce jar of Nancy Lee Miracle Cream she must pay five dollars for it and with it she will receive further instructions. These further instructions consist of more extensive instructions for diet and many suggestions for strenuous exercise. Nothing is now or has ever been said in respondent's magazine advertising about diet or exercise as a part of the treatment or instructions. One does not know that she must take a course of diet and exercise in order to increase the size of her bust until after she has parted with her first dollar. Prior to February 3, 1931, nothing was said in the magazine advertising about a treatment in connection with the use of this cream; since said date the words miracle cream and treatment have been used therein but this advertising which brings about the contact between the respondent and its customer does not disclose what the treatment is or what the instructions are and the purchaser is led to believe therefrom that it is the cream alone which enlarges the breasts. The respondent does an annual business in the sale of said Nancy Lee Miracle Cream of approximately \$40,000.

PAR. 2. Respondent causes said Nancy Lee Miracle Cream when so sold to be transported through the United States mails from its place of business in the city of New York, State of New York, into and through other States of the United States to purchasers who are the ultimate consumers thereof to their respective places of residence.

PAR. 3. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations likewise engaged in the sale and transportation in commerce between and among the various States of the United States of massage creams, apparatuses and mechanical devices for use for the same purposes as respondent's said Nancy Lee Miracle Cream; among which are F. E. Williams of the Williams Sanative Company of Buffalo, N.Y., who sells Peerless Wonder Cream used in connection with the development of the bust; the Olive Company of Clarinda, Iowa, which markets a breast pump for use in the develop-

ment of the breasts; the Renault Company of Baltimore; the Irving Strain Company of Baltimore; all of which manufacture and sell in interstate commerce a cream used in connection with the development of the breasts.

PAR. 4. Respondent advertises said Nancy Lee Miracle Cream in magazines of general circulation throughout the United States, such as Film Fun, Photoplay, True Romances, Picture Plays, Physical Culture, Corset Publications, Young's Magazine, Breezy, Movie Romances, and The Household Journal, and also in letters, circulars, booklets, purported testimonials, and other literature and photographs purporting to be descriptive of the merits of said product sent through the United States mails. In and through such media the following, among other similar statements and representations, were and are used and made by respondent in the aid of the sale of its said cream:

#### IN CIRCULARS, PAMPHLETS, AND LETTERS

It is so easy to have a full firm bust that fashion demands. My wonderful new Miracle Cream combination enlarges the breast 1 to 3 inches.

A lovely full firm bust. Just apply my scientific cream and follow instructions for 30 days. My new method moulds thin bust to beautiful contours. Sagging, flabbiness entirely corrected.

Let Miracle Cream give you the alluring, ravishing bust of youthful freshness, the superb womanly figure that is the centre of attraction everywhere.

Rounded, fully developed youthful breasts—that is the Miracle Cream promise that has been fulfilled for thousands of women everywhere.

A wonderful discovery—Miracle Cream—builds firm, elastic healthy tissue—magically fills out the contours—gives you breasts that are truly lovely.

A few minutes application a day, and soon your breasts will develop to beautiful fullness and shapeliness. They will be modelled, as if by a famous sculptor to exquisite perfection of form.

My wonderful new Miracle Cream Combination enlarges the breasts 1 to 3 inches.

Miracle Cream (my new scientific cream).

My Miracle Cream quickly *dissolves* all the wastes imbedded in the pores and natural elimination occurs in a few moments. The tiny passages are made clean and open and the nourishing oils of Miracle Cream are able to seep deep into the breasts—revitalizing swiftly, speeding up the circulation. Now your breasts can function normally. They can breathe once more. Once again they are able to cast off waste and poison. Now they can assimilate the natural food-oils they have been striving for. Now your breasts are in that perfect condition of receptiveness that makes development easy, quick and safe! Miracle Cream will continue to keep the pores open, fresh and clean, even while it nourishes and aids bust-building in conjunction with the natural principles of my unique treatment!

Twice a day, in the morning and evening, Miracle Cream is gently applied, according to special instructions. No fuss. No bother. And not a soul in the world knows anything about it. Yet, in a short time you notice a differ-



ence. Something is happening! Can it really be? You are amazed, delighted, to think that anything so simple and so pleasant as Miracle Cream could work so quickly.

Use your Miracle Cream today, and every day. Use it in extra generous quantities so that you may the more quickly attain the full development of your bust.

Another thing, Miracle Cream gives its best results in the summer time when the pores are open and more readily absorb in its nourishing properties.

Why not send today for your Miracle Cream?

Remember Miracle Cream is concentrated. You cannot judge its power by the size of the container any more than you can judge a man by the size of his body. Miracle Cream is not like ordinary cream. It is made of special \* \* \* It is scientific. It frequently works with magical quickness. A few minutes each day and—presto—you have the natural womanly curves that fashion demands, that women envy and men frankly admire.

Did you notice, too, how Miracle Cream is *asorbed*. How the simple application of it stimulates the capillaries to new life and activity, thus nourishing and building up those starved cells? But naturally you can't *see* the good work that is going on. You can only see the *results*.

Just why is your bust under-developed? Do you know? I'll tell you! It's because of *paralyzed pores*. Your body lacks the vital oils that nature provides to nourish and build up the breasts. The pores of your breasts are paralyzed and so clogged with wastes and impurities that they cannot breathe. If you have used other developing creams or lotion, you have gotten no results because they could not penetrate beyond those stopped-up pores. Therein lies the great secret of the superiority of my famous *Miracle Cream*. It penetrates!

#### IN TESTIMONIALS

Since I have been using the Miracle treatment my appearance has improved wonderfully. My dresses look much better on me and this summer when I put on a bathing suit I was no longer conscious of small thin breasts. I cannot say enough for your treatment. It does all you claim for it and more.

My wonderful new Miracle Cream combination enlarges the breasts one to three inches.

I heard of your Miracle Cream. However I didn't think it could be much good—but I took a chance and I am certainly glad I did! What a difference! I don't look like the same girl. I am just raving about your Miracle Cream to all my friends.

Your Miracle Cream method is everything you say it is. My bust was beginning to sag and now it is as firm as ever.

A wonderful discovery—*Miracle Cream*—builds firm, elastic, healthy tissue. Magically fills out the contours—gives you breasts that are truly lovely.

I take much pleasure in writing you about the wonderful results I have obtained through the application of your wonderful Miracle Cream.

Please—In fairness to yourself—don't delay a single day. Use my Miracle Cream treatment faithfully—I know it will do for you what it has already done for me. Only a few minutes application a day and soon your breasts will develop to wonderful beauty and shapeliness. They will be modeled, as if by a famous sculptor, to exquisite perfection of form.

Dorothy Dawn, famous movie star, joins many other lovely stars of the screen and stage in saying: "I think Miracle Cream is wonderful! One Jar

Rounds Out Bust. I feel that I must write a few lines about your Miracle Cream. It is just what you say it is."

*Pictorial arrangements.*—Respondent sends out many pictures purporting to show the busts of many women before and after using Nancy Lee Miracle Cream showing enlargements of the bust purporting to be due to the use of Nancy Lee Miracle Cream.

*In magazines.*—The following testimonials appear in the advertisements of Nancy Lee Miracle Cream in 1932 issues of the magazines named in paragraph 4 hereof:

I feel that I must write a few lines about your Miracle Cream method—it is just what you say it is. My chest was so thin, but it surely is rounding out and my bust is coming along fine.

Just tell the world if they want to know anything about your Miracle Cream treatment, to enclose a stamp and I will tell them, but I don't want my name and address in full in public.

M. H. E., *Sioux City, Iowa.*

Thank you for your kindness. The first jar of Miracle Cream did a lot of good. It certainly forms your breasts to a marvelous shape. I am enclosing a picture of myself in a bathing suit.

Miss M. D. Kapak, *New York.*

I am the mother of four children, although very young, my bust became flabby and started to sag. I really thought there was no possible chance of ever restoring them to their original firmness.

Now, after completing the treatment of the 5-ounce jar, I have once again achieved for myself that feminine loveliness which I thought was out of my life forever. You sure did give it the proper name *Miracle Cream.*

Mrs. M. M., *New York, N.Y.*

The respondent has expended the sum of approximately \$12,000 per annum in so advertising the said product.

PAR. 5. The statements and representations described in paragraph 4 hereof are false and misleading in that:

(1) Nancy Lee Miracle Cream does not and cannot nourish the tissues of starved or shrunken breasts or stimulate the circulation thereof;

(2) Nancy Lee Miracle Cream will not work wonders nor will its use increase the size of the breasts;

(3) Nancy Lee Miracle Cream will not prevent the sagging or drooping of the breasts;

(4) Nancy Lee Miracle Cream will not increase the size of the breasts from one to three inches nor at all;

(5) Nancy Lee Miracle Cream does not and cannot fill out the contours of the breasts;

(6) The use of Nancy Lee Miracle Cream will not bring about full, firm, lovely breasts, or fashionable forms or either of them;

(7) The use of Nancy Lee Miracle Cream does not insure permanently or at all round or firm breasts.

(8) Nancy Lee Miracle Cream does not and cannot replenish or nourish the glands or tissues nor does it restimulate them nor does it make them elastic or youthful or energetic. Nancy Lee Miracle Cream does not penetrate the flesh nor does it stir sluggish cells to activity nor does it restore or revitalize tissues.

(9) Nancy Lee Miracle Cream does not and cannot prevent the weakening of vital tissues.

(10) Nancy Lee Miracle Cream does not reach every organ or any organ of the breasts either inside or out.

(11) One may not and cannot mould the breasts to different shapes by the use of Nancy Lee Miracle Cream.

(12) The advertising of respondent holds out that Nancy Lee Miracle Cream is scientifically prepared. In Commission's Exhibit 54 the following appears as a part of respondent's advertising:

It is scientific. The treatment works with magic quickness. A few minutes each day—and presto—you have the natural womanly curves that fashion demands, that women envy and men frankly admire.

No one but Victor W. Titus, vice president of respondent, a youth of 23, with no professional training whatsoever, has testified that the cream is scientifically prepared. The formula for this mixture was purchased by the said Victor W. Titus and his brother about four years ago, according to the testimony of the said Victor W. Titus, from a physician whose name he does not now recall. According to the testimony of Alexander G. Murray, chemist, P. W. Spickard, M.D., and V. S. McDaniel, M.D., all of the Food and Drug Control of the Department of Agriculture, Nancy Lee Miracle Cream is not scientifically prepared.

Nancy Lee Miracle Cream consists approximately of 30 to 60 percent water, a mixture of paraffin products, such as petroleum and a fatty or waxy substance, such as wool fat, approximately 40 percent, with a trace of borax. Nancy Lee Miracle Cream is no more effective than vaseline in developing the breasts of a woman and vaseline is not effective at all. Nancy Lee Miracle Cream acts only as a lubricant but there is no value to its use as a breast developer. Nancy Lee Miracle Cream is nothing but a massage cream. It is not scientifically prepared.

(13) In all of respondent's advertising it is the virtues of the cream, not the treatment, that are featured. In some of its advertisements the treatment is not mentioned. Wherever the word

*treatment* is used by respondent in its advertisements it is so negligibly set forth and the words Miracle Cream so featured as to deceive even a careful reader into the belief that it is the cream alone for which all claims are made. It appears therefrom that it is the cream which will develop the bust from one to three inches by the mere application thereof; that it is the cream that will lift the sagging breasts; and that it is the cream that will restore feminine loveliness.

(14) There was no woman by the name of Nancy Lee connected with the respondent until about four months ago. After several hearings in this matter were had, Victor W. Titus, vice president of the respondent, caused the name of his sister to be changed by the courts of New York to the name of Nancy Lee. At this time the true name of his said sister was Edna Weimer but she had assumed the name of Mary Titus. Edna Weimer is and was connected with the respondent as a stenographer only. Her duties are to send out form letters on the subject of bust development. Edna Weimer, Mary Titus, or Nancy Lee, or by whatever name she may be called, is 22 years of age and has had no training as a doctor, dietician, or chemist. For four years this cream has been sold under the name of Nancy Lee Miracle Cream. All letters and advertising matter dealing with this cream hold out to purchasers and prospective purchasers that there is a woman named Nancy Lee who is the manufacturer of and who is personally in charge of the sale of and correspondence with reference to this cream. In truth and in fact the manager and person in charge of the business of respondent, including all advertising and the preparation of these form letters, is a man.

(15) Many pictures of women with tremendous busts are used by respondent in its advertising of the said cream, the reasonable inference being that these large busts are obtained by the use of Nancy Lee Miracle Cream. Some of these pictures are mere photographs of drawings dressed up to look like actual photographs of women. Others are of women who have not used Nancy Lee Miracle Cream at all.

The following is illustrative of how respondent obtains some of these pictures. On page 1 of Commission's Exhibit 39 appears the picture of a very beautiful woman. It is the picture of Miss Jeanne Carroll, of New York City, and depicts her as possessing a beautiful, shapely and well-developed bust. This picture was obtained and used by respondent without Miss Carroll's consent. It has been "dressed up" so as to show an abnormally developed bust, while

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## Findings

Miss Carroll's bust is actually small. The following is some of Miss Carroll's testimony with reference to this picture:

That is my picture on page 1 of Ex. 39;  
 It is not a true production;  
 The bust has been enlarged;  
 I never had a bust as large as the one pictured there;  
 I have never used Nancy Lee Miracle Cream;  
 I never authorized the use of this picture;  
 I do not know how respondent came in possession of it;  
 I did not know that they were in possession of it until my attention was called to its use in respondent's advertising last July;  
 Until that time I did not know there was such an institution as Nancy Lee Institute;  
 I never had any correspondence with them;  
 I never had any business relations with them in any way;  
 Since then I have seen my picture in connection with the advertisements of Nancy Lee in periodicals;  
 They were True Romances, the Hollywood Magazines, the Silver Screen, Screen People;  
 It was the same picture as appeared here on the first page of Com. Ex. 39;  
 All of these pictures had the exaggerated size of the bust that is shown in Com. Ex. 39.

The following is the explanation of Victor W. Titus, vice president of respondent, as to how this picture was obtained:

I wanted a picture for the front page of the book (referring to the front page of Com. Ex. 39) so we went to the Mitchell Studio, 1496 Broadway and I went in there and asked for a picture of a girl to use in the pamphlet. I mentioned just what it was for and we went through about 500 pictures and I picked this particular picture out and I purchased it and paid him for it and got a receipt for it and I have been using it for about two years in the front of the book.

Q. Do you change all of the pictures?

A. Not all. In some cases where the woman has a large bust we do not change and in some cases we do. In the case of the Jeanne Carroll picture there was nothing done to the picture only to darken the negative just a little, to bring out the bust and make them a little more prominent.

PAR. 6. Each and all of the representations as to the efficacy of Nancy Lee Miracle Cream, contained in the advertising as set forth above, had and have the tendency and capacity to mislead and deceive the purchasers and prospective purchasers of respondent's said Nancy Lee Miracle Cream into the belief that such representations are true and to induce them to purchase respondent's said Nancy Lee Miracle Cream in such belief, and had and have the tendency and capacity to unfairly divert trade from said competitors to respondent.

Order

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PAR. 7. Prior to the filing of the complaint herein respondent ceased the manufacture and sale of Dermo Cream and ceased to trade under the name of Mary Titus.

## 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 AND ORDER DISMISSING COMPLAINT AS TO CERTAIN CHARGES THEREIN

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony, evidence, briefs, and oral arguments of 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 respondent Nancy Lee Institute, a corporation, its agents and employees, in connection with the selling or offering for sale or in aid of the sale of Nancy Lee Miracle Cream in interstate commerce between and among the several States of the United States and the District of Columbia, cease and desist from representing in advertising, through magazines, newspapers, booklets, pamphlets, pictures, letters, circulars, testimonials, or otherwise that—

(a) Nancy Lee Miracle Cream nourishes the tissues of starved or shrunken breasts, or stimulates the circulation thereof;

(b) The use of Nancy Lee Miracle Cream will increase the size of the human breasts;

(c) The use of Nancy Lee Miracle Cream will prevent the sagging or drooping of the breasts;

(d) The use of Nancy Lee Miracle Cream will increase the size of the breasts from one to three inches or increase them at all;

## Order

(e) The use of Nancy Lee Miracle Cream will fill out the contours of the breasts;

(f) The use of Nancy Lee Miracle Cream will bring about full, firm, lovely, or fashionable forms or either of them;

(g) The use of Nancy Lee Miracle Cream will insure permanently, or at all, round or firm breasts;

(h) The use of Nancy Lee Miracle Cream replenishes or nourishes the glands or tissues of the breasts;

(i) The use of Nancy Lee Miracle Cream makes the breasts elastic, or youthful, or energetic, or either of them;

(j) Nancy Lee Miracle Cream is a scientific restorative;

(k) The use of Nancy Lee Mircle Cream penetrates the flesh, stirs sluggish cells to activity; restores or revitalizes tissues, or either of them;

(l) The use of Nancy Lee Miracle Cream prevents the weakening of vital tissues;

(m) The use of Nancy Lee Miracle Cream reaches every organ or any organ of the breasts either inside or out;

(n) The use of Nancy Lee Miracle Cream will mould the breasts to different shapes;

(o) That Nancy Lee Miracle Cream is sold by a woman;

(p) Or from using any words, pictures, devices, or means which import or imply that the use of Nancy Lee Miracle Cream will increase the size of a woman's bust, or that it has any virtue other than as a lubricant in massage;

(q) Or from advertising Nancy Lee Miracle Cream in connection with any treatment for developing the bust unless it is clearly indicated that its only virtue is as a lubricant in massage.

*It is further ordered*, That the charges of the complaint as to Dermo Cream and as to respondent's trading under the name of Mary Titus be, and they are hereby dismissed.

*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

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IN THE MATTER OF  
DAVID FELDMAN, INDIVIDUALLY AND TRADING AS  
FELDMAN & SONS

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

*Docket 2076. Complaint, Nov. 30, 1932—Order, Apr. 10, 1933*

Consent order requiring respondent individual, his representatives, agents and employees, in connection with sale or offer in interstate commerce, of men's shirts, to cease and desist from using words "fast color" or "commercial fast color" or other words of like import in describing, advertising or labeling product in question unless color or dye therein, "is a true fast color and will not fade or blanch when subjected to laundering."

*Mr. Henry C. Lank* for the Commission.

*Mr. Erwin I. Feldman*, of Baltimore, Md., 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 David Feldman, individually and trading as Feldman & Sons, 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 the said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the name of Feldman & Sons with his office and principal place of business located in the city of Baltimore, State of Maryland. Respondent is now and for more than 2 years last past has been engaged in the manufacture of men's shirts and in the sale and distribution thereof to retail dealers and jobbers located at points in the various States of the United States and causes said shirts when so sold to be transported from his principal place of business in the State of Maryland into and through other States of the United States to the purchasers thereof at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture of men's shirts and in the sale and distribution thereof in interstate commerce.

PAR. 2. In the sale and distribution of his shirts throughout the United States as hereinabove described, respondent has caused and still causes large and substantial numbers of said shirts to be adver-



tised, offered for sale, sold and distributed under the following designations, descriptions and representations, to wit:

Fast Color

100 x 60 Fast Color Broadcloth Shirt

100 x 60 Broadcloth Commercial Fast Color

PAR. 3. The truth and fact is that said shirts represented and marketed by respondent as "Fast Color" and "Commercial Fast Color" are not manufactured from cloth which is a true fast color nor from materials which have been vat dyed. The said shirts so advertised will fade or blanch when subjected to laundrying.

PAR. 4. The respondent has caused the said designations, descriptions, and representations to be stamped on the neck band of said shirts or to be woven or printed on labels which are sewed in the collar of said shirts and has caused the said designations, descriptions and representations to be printed on paper bands which are placed around the said shirts before delivery to respondent's customers. The above designations, descriptions, and representations come to the attention of the consuming or purchasing public by reason of the above practices of the respondent. The terms "Fast Color" and "Commercial Fast Color" when used in connection with shirts mean to the consuming or purchasing public that the said shirts are made from cloth which is dyed a true fast color and which will not fade or blanch when subjected to laundrying.

PAR. 5. Respondent's advertising, describing, representing, offering for sale and selling the said shirts as Fast Color and Commercial Fast Color as heretofore described are false, misleading, and deceptive and have the capacity and tendency to mislead and deceive large and substantial numbers of the purchasing and consuming public into purchasing said shirts in the erroneous belief that the said shirts are true fast color and will not fade or blanch when subjected to laundrying.

PAR. 6. The use by the respondent of the false, misleading, and deceptive representations, statements, and descriptions as hereinabove 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 business of the marketing of shirts.

PAR. 7. Said false, misleading, and deceptive acts, practices, and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful and constitute unfair methods of com-

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petition in commerce within the intent and meaning 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", approved September 26, 1914.

## ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent in which answer respondent consents that the Commission may make, enter, and serve upon said respondent an order to cease and desist from the violations of law charged in the complaint,

*It is now ordered,* That the respondent, David Feldman, individually and trading as Feldman & Sons, his representatives, agents, and employees do cease and desist from using the words "fast color" or "commercial fast color" or other words of like import in describing or advertising, or on the labels of, the men's shirts which he sells or offers for sale in interstate commerce unless and until the color or dye in the said shirts is a true fast color and will not fade or blanch when subjected to laundering.

*It is further ordered,* That the said respondent within 60 days from the date of 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 has complied with the order to cease and desist hereinabove set forth.

## Complaint

## IN THE MATTER OF

## H. MICHELSEN 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 2033. Complaint, May 11, 1932—Decision, May 8, 1933*

Where a corporation engaged in New York City in the manufacture and sale of bay rum from oil of bay from Porto Rico and St. Johns, conspicuously labeled its bottles with the words "H. Michelsen, St. Thomas, West Indies", together with the legend in smaller type, "The H. Michelsen Co., New York, sole agents for the North American Continent", and displayed upon its letterheads, invoices, and order blanks, depiction of its bottles so labeled, and offered and sold said product in bottles with the words "St. Thomas" blown therein, and shipped the same in packing boxes bearing the words "H. Michelsen, St. Thomas, W. I.", with effect of injuring competitors who do not use such labels, containers, letterheads, etc., for their domestic products, not made at St. Thomas, West Indies, and of diverting trade to it from competitors through purchases by persons who believed its products to have been made in St. Thomas, Virgin Islands, and bought the same as and for the more costly and favored product there made, and with capacity and 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.

## 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 bottling and sale of bay rum and with principal office and place of business in New York City, with misbranding or mislabeling as to source of origin of product, and advertising falsely or misleadingly in said respect in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid in the bottling and sale of domestic bay rum, displays the word "St. Thomas, West Indies" on labels of the bottles of its said product, together with the words, lower down and in smaller type, "Sole agents for the North American Continent", and also displays the words "St. Thomas, W. I." upon the packing boxes used for its said bottled product, and makes use of bottles, some of which have blown in the bottom thereof,

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"H. Michelsen—Bay Rum—St. Thomas"; notwithstanding fact product "so marked, stamped, branded, and labeled is not, and since 1918 had not been bay rum manufactured at St. Thomas, Virgin Islands, West Indies"<sup>1</sup>

The adoption by respondent, as alleged, "of the address, 'St. Thomas, West Indies' as the address to be placed upon labels used by it on bottles of the domestic bay rum manufactured, offered for sale and sold in interstate commerce by it and the use of the words St. Thomas as blown into the bottles used by respondent in bottling such bay rum and the use of the address St. Thomas, W. I., on packing boxes used by it as containers in which to pack the said bay rum, has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the bay rum manufactured and sold as aforesaid by the respondent has been and is bay rum manufactured at St. Thomas, Virgin Islands, West Indies, and imported into the United States therefrom, and to induce the purchase of the respondent's bay rum by members of the purchasing public in reliance upon such erroneous belief."

Aforesaid practices of respondent, as further alleged, have placed and each of them "has placed and places in the hands of wholesale dealers and retail dealers selling the respondent's bay rum, the means whereby such dealers may mislead and deceive the consuming public into the purchase of respondent's bay rum as and for bay rum manufactured at St. Thomas, Virgin Islands, West Indies," and "aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to unfairly divert trade to the respondent from corporations, individuals, and partnerships, offering for sale and selling bay rum manufactured in the West Indies and from corporations, individuals, and partnerships

<sup>1</sup> As set forth in the complaint, respondent prior to 1918 sold bay rum made at St. Thomas, Virgin Islands, West Indies, and since then has sold bay rum which has been exclusively domestic.

As alleged in the complaint with respect to bay rum made in the West Indies and particularly at St. Thomas—

"Bay rum is now and for many years has been manufactured in the West Indies, and particularly at St. Thomas, Virgin Islands. Much of this bay rum is exported from the West Indies to the United States of America and into and through the several States thereof. Such bay rum has acquired a favorable reputation in the United States as a soothing antiseptic and astringent, resulting in the establishment of a good will, which developed from time to time an increasing popular demand by the consuming public for bay rum manufactured in the West Indies, and particularly at St. Thomas, Virgin Islands. In 1918, when the respondent started to manufacture the bay rum now manufactured, offered for sale and sold by it, the bay rum manufactured at St. Thomas, Virgin Islands, and imported therefrom into the United States had long been widely and generally known and the words St. Thomas as applied to bay rum had for many years theretofore come to signify and mean and ever since has signified and meant and now signifies and means to the trade and to the consuming public of the United States a bay rum manufactured at St. Thomas, Virgin Islands, West Indies, and imported into the United States therefrom."

offering for sale and selling bay rum manufactured elsewhere than in the West Indies, but truthfully described.”

“The above named acts and practices of the respondent”, as charged, “are 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.”

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 May 11, 1932, issued and served its complaint upon respondent, H. Michelsen Company, Inc., charging it with unfair methods of competition in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer to the said complaint, hearings were had and evidence was introduced on behalf of the Commission and on behalf of the respondent before a trial examiner theretofore duly appointed, and the said trial examiner having filed his findings of fact herein, thereupon this proceeding came on for final consideration by the Commission on the brief of counsel for the Commission and the record, the respondent having advised the Commission that it did not desire to file a brief, and the Commission having 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. Respondent is a corporation organized in 1894 with its plant and principal place of business located at 145 Hudson Street in the City and State of New York. Its president is Henry C. Michelsen. It is and since 1918 has been engaged in the business of manufacturing and selling bay rum.

PAR. 2. The respondent’s annual sales of bay rum approximates \$40,000. It sells approximately four fifths of its output to the Panama Railroad Company and the other one fifth to wholesale dealers and retail dealers, some of whom are located in other States of the United States than New York, and still others of whom are located in foreign countries. Respondent causes the bay rum domestically so sold to be shipped and transported from the State of New York through and into other States of the United States and deliv-

ered to the purchasers thereof at their respective points of location in a State or States of the United States other than the State of New York. Respondent causes other of its bay rum so sold to be shipped and transported into foreign countries and delivered to the purchasers thereof at their respective points of location.

PAR. 3. Respondent in the course and conduct of its business places on the bottles in which its bay rum is sold to the public, labels conspicuously bearing the words printed in bold type "H. Michelsen, St. Thomas, West Indies", followed in smaller type by the legend "The H. Michelsen Company, New York, sole agents for the North American Continent"; places illustrations of bottles bearing such labels upon its letterheads, invoices, and order blanks; offers for sale and sells some of its bay rum in bottles which have blown in the glass composing said bottles the words "St. Thomas"; and ships its bottled bay rum in packing boxes bearing the words "H. Michelsen, St. Thomas, W.I.

PAR. 4. Respondent's bay rum is not made in St. Thomas, West Indies, but is made by respondent in its plant in New York City. Respondent between 1894 and 1917 was the sole bay rum selling agent for the North American continent for H. Michelsen, who for over 45 years preceding 1918 made bay rum at St. Thomas, West Indies, and sold it through the respondent among the several States in bottles bearing labels of which the labels now used by the respondent are facsimiles. In 1918 the St. Thomas plant was acquired by respondent or its president and the manufacturing business was transferred to New York City. Respondent makes its bay rum from oil of bay brought from Porto Rico and St. Johns, alcohol purchased in the State of New Jersey, which alcohol has been distilled from molasses, pure water, and the denaturant required by the prohibition law.

PAR. 5. The bottles containing respondent's bay rum are sold by retail dealers to the consuming public and when so sold have affixed to them the labels affixed by the respondent and heretofore referred to. Retail dealers and purchasing consumers understand the words "St. Thomas" when applied to bay rum to signify bay rum made at St. Thomas, West Indies. Retail dealers and consumers will pay a higher price for bay rum so labeled than they will for bay rum manufactured in the United States. Other brands of domestic bay rum are manufactured in this country and are not represented as having been made at St. Thomas. Such other domestic brands sell for a lower price than that at which the respondent's bay rum is retailed to the consuming public.

PAR. 6. There are other corporations and individuals and partnerships engaged in the manufacture and sale of bay rum to wholesale and retail dealers located in the several States of the United States and in foreign countries and who cause the same when so sold to be shipped and transported from the State and country of manufacture to said wholesale dealers and retail dealers, purchasers thereof at their respective points of location. Some of these manufacturers make and mix their bay rum at St. Thomas in the Virgin Islands where bay rum has been made and sold since at least 1872. Such manufacturers, name, designate, brand, and label their products so as to indicate that it is made at St. Thomas and have done so for many years. Others of these manufacturers make their bay rum in the United States but in the sale thereof as aforesaid in no wise represent that it is made at St. Thomas in the Virgin Islands.

PAR. 7. Respondent's largest customer, the Panama Railroad Company, is acquainted with the fact that the bay rum sold to it by respondent is manufactured in New York City.

#### CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce. The use by respondent of the labels, bottles, brands, tags, letterheads, invoices, and order blanks as hereinbefore found by the Commission has the capacity and tendency to and does in fact injure competitors who do not use such labels, bottles, brands, tags, letterheads, invoices, and order blanks because it diverts to respondent from its competitors sales of bay rum to persons who believe that the bay rum manufactured by respondent in New York and offered for sale and sold in interstate commerce so labeled and marked is made in St. Thomas, Virgin Islands, and who purchase respondent's bay rum in and because of such belief. The practices of respondent under the conditions and circumstances described in the foregoing findings 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 answers of the respondent, and the testimony taken and brief filed herein, 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 now ordered*, That the respondent, H. Michelsen Company, Inc., its officers, agents, representatives, and employees, or any of them, in connection with the offering for sale, or sale of bay rum in commerce among the several States of the United States or in the District of Columbia, cease and desist from:

(1) Using labels on its bottles or other containers containing bay rum bearing the unqualified phrase "H. Michelsen, St. Thomas, West Indies", or in any other way representing or implying that the said bay rum offered for sale and sold by it is manufactured in the West Indies when such is not the case;

(2) Using letterheads, invoices, order blanks or other literature or advertising matter containing pictorial illustrations of bottles bearing such labels;

(3) Using bottles which contain the words "St. Thomas" blown therein in which to offer for sale or sell its bay rum when such bay rum so offered for sale and sold by it is not manufactured in St. Thomas, Virgin Islands;

(4) Using the phrase "H. Michelsen, St. Thomas, W. I." as a brand or tag on packing boxes or other containers containing bay rum offered for sale or sold by it, or in any other way representing or implying that the said bay rum offered for sale and sold by it is manufactured in the West Indies when such is not the case.

*It is further ordered*, That respondent shall within 60 days from the date of service upon them 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

SAMUEL BRIER, DOING BUSINESS AS SAMUEL  
BRIER & CO.

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

*Docket 2097. Complaint, Mar. 29, 1933—Order, June 8, 1933*

Consent order requiring respondent individual, in connection with sale or offer in interstate commerce of luggage, to cease and desist "from labeling, stamping, or otherwise advertising luggage manufactured in whole or in part from split seal or seal splits as 'seal' or 'genuine seal' or in any manner indicating that the material used in the manufacture is other than seal splits or split seal."

*Mr. Alfred M. Craven* for the Commission.

*Bender & Rubin*, of Philadelphia, Pa., 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 Samuel Brier, 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. The respondent is now and has been for several years last past engaged at the city of Philadelphia, Pa., under the name of Samuel Brier & Co., in the business of manufacturing and selling in interstate commerce to jobbers and retail dealers throughout the United States handbags, suitcases, and other luggage. He causes said merchandise when sold to be shipped in interstate commerce from his said place of business at Philadelphia into and through other States of the United States to the purchasers thereof at their respective points of location. In the course and conduct of his business respondent is and has been in competition with many other persons, firms, and corporations located in the United States engaged in the manufacture and sale in interstate commerce of handbags, suitcases, and other luggage and in the shipment of same from their respective points of location to purchasers throughout the various States of the United States.

PAR. 2. Many of respondent's competitors mentioned in paragraph 1 hereof make and sell luggage manufactured from leather made

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from the outside or topside of sealskin after same has been separated or split from the flesh side of the skin. Such leather is generally described by makers of luggage and generally known to manufacturers, dealers, and the purchasing public as "seal" or "genuine seal." Until recently the flesh side of the sealskin has been by manufacturers of leather discarded as waste material. Such material is now used to some extent for the making of leather, which leather is ordinarily described in the trade as "split seal." It is very much inferior in quality, durability, and price to "seal" or "genuine seal" as described in this paragraph.

PAR. 3. Respondent among other merchandise manufactures and sells in the course of business described in paragraph 1 hereof luggage made from cardboard and wood over which is imposed as a covering the material mentioned in paragraph 2 hereof as split seal, which material is treated, embossed, and finished by said respondent so as to imitate the leather known as seal or genuine seal as described in paragraph 2 hereof. Respondent by means of stamps and tags affixed to said luggage made of split seal describes said luggage as being made of "genuine seal." Said description made on or attached to said luggage reaches the public through the retail merchants and is used by said merchants in advertising said spurious luggage and also in selling said spurious luggage to the public.

PAR. 4. The said description and representation made by respondent as to his merchandise is false and fraudulent in that the material described is not genuine seal or seal in any sense as the terms seal and genuine seal are commonly understood by the purchasing public. The use of said description and representation has the capacity and tendency to deceive the purchasing public and to induce purchasers to buy the luggage thus described in and on account of a belief that the said luggage is made of genuine sealskin. The said false branding and description also have the capacity and tendency unfairly to divert and do divert trade from respondent's competitors to the respondent.

PAR. 5. The above alleged acts and things done by 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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission on the 3d of March, 1933, issued and thereafter served its complaint against the respondent, Samuel Brier, doing business as Samuel Brier & Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent thereafter filed an answer to said complaint, which answer is in the following language, to wit:

The respondent, Samuel Brier, doing business as Samuel Brier & Co. for answer to the complaint of the Federal Trade Commission herein states—

That respondent refrains from contesting this proceeding and consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violation of the law alleged in the complaint.

Thereafter this proceeding came on regularly for disposition and decision by the Commission under subdivision 2 of Rule III of the Rules of Practice and Procedure adopted by the Commission, and the Commission being fully advised in the premises,

*It is ordered*, That the respondent, Samuel Brier, in connection with the sale and offering for sale of luggage in interstate commerce between and among the several States of the United States and in the District of Columbia do cease and desist from labeling, stamping, or otherwise advertising luggage manufactured in whole or in part from split seal or seal splits as "seal" or "genuine seal" or in any manner indicating that the material used in the manufacture is other than seal splits or split seal.

## IN THE MATTER OF

## NATURAL EYESIGHT INSTITUTE, 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 1838. Complaint, May 27, 1930—Decision, June 9, 1933*

Where a corporation engaged in the sale and distribution of its so-called "Natural Eyesight System", or course of instruction (including advice as to hygienic living and mental science), and "Natural Eye Normalizer", for cure of defects of vision, so that customer might avoid purchase and use of glasses,

- (a) Included the word "Institute" in its corporate name and thereby and through constant use thereof represented itself to be an institute, notwithstanding fact it carried on no clinic, research work, or experimentation, had no optical equipment, gave same advice and directions, irrespective of particular type of defect of particular individual, to all customers, and seldom learned what defects of vision any customer had or believed himself to have, never made diagnoses of defects of the eyes, had no medical advisor or oculist in its organization or employ, bore no relation to its customers of a professional character, or other than a commercial one, and was not an organization for the promotion of learning, art or science, nor organized for work of a scientific or literary character, and was not an "Institute";
- (b) Made such representations in its advertisements in periodicals of national circulation, circulars, etc., as "Millions of people are wearing glasses, but you don't have to wear them to see with, *unless you want to*", "\* \* \* Specifically speaking, glasses are unnecessary because there is nothing that glasses do that the eyes cannot be taught to do better \* \* \*" "*Divorce your spectacles! See without glasses!* The Natural Eyesight System makes them unnecessary. Thinking thousands are using this New Knowledge of the Eye, discarding their glasses and having more satisfactory vision without them than they ever had with them \* \* \*", "The Natural Eyesight System corrects eye defects—simply, safely, satisfactorily—*without glasses*", "Science has solved the Seeing Problem \* \* \* and it is no longer necessary to wear glasses \* \* \*", and "\* \* \* most people can practically restore their eyes and get rid of glasses in 90 days or less, if they will give a little time daily to the work", and asserted that its said system accomplished "its results through the removal of the *causes* of defective eyesight", and thereby corrected nearsightedness, farsightedness, astigmatism, old age eyes, and numerous other specified defects and ailments of the eye, notwithstanding the fact that in a substantial majority of cases it is not possible for patients, theretofore users of glasses for defects due to nearsightedness, farsightedness, astigmatism, advancing years, and other conditions, through aforesaid "natural" methods to remove such defects or so far alleviate them, as to make it possible successfully to remove glasses, and its customers, in attempting to apply to themselves its aforesaid system, under the same instructions regardless of their particular defects, could not obtain by a substantial margin, the benefit and improvement obtainable from the so-called "natural" methods of treatment, when administered by skilled practitioners, who adapt the same to the specific ocular conditions of the individual patient; and

(c) Represented its so-called "*natural eye normalizer*" as "a highly scientific, hand-operated instrument for self-applied treatment of the eyes, for the correction of all eye defects, such as nearsightedness, farsightedness", and various other ailments and defects referred to, and as marking "the dawn of the age of real vision and the passing of the age of spectacles", and asserted that with such "wonderful instrument \* \* \* included in the Natural Eyesight System, now available for home use, no individual needs to face a future of steadily failing vision, with possible helplessness as an ultimate consequence of loss of eyesight", facts being said instrument was not of great therapeutic value, but merely a means of mechanical massage, effects of which were inferior to skilled massage by hand;

With result that such untrue, misleading and deceptive representations led to purchase of said "system" by customers who would not otherwise have bought the same, and who might and in numerous instances would have purchased either competitive courses of instruction, advertised and sold by others, to professional and lay customers, for relief through "natural" methods of defects of refraction, or original or replacement glasses or lenses, for which said system was offered as a substitute:

*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. Eugene W. Burr* for the Commission.

*Mr. Urbane L. Barrett* of Santa Monica, Calif., 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 California corporation engaged in sale and distribution of a system of training for improving eyesight, to purchasers in various States, and with principal office and place of business in Los Angeles, with advertising falsely or misleadingly as to the nature and results thereof, and with using misleading corporate name and misrepresenting business status, 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 its said system, which it designates as "Natural Eyesight System", and which includes a device by it designated as "Natural Eye Normalizer", in advertising said system in magazines and periodicals of national circulation, and in booklets and other literature distributed by it to prospective customers, makes such representations as that said system "saves sight, rebuilds eyes, and makes victory over glasses possible", and that said "Normalizer is a revolutionary invention which makes it easy to use the National Eyesight System in your home", and that the system is a home course of "self-applied eye

treatment" for conserving and restoring eyesight and discarding glasses, which "accomplishes its results through removal of the causes of defective vision, thus correcting nearsightedness, farsightedness, astigmatism", etc.; the facts being it is impossible for said system, used as directed, to change defects of refraction and remove cause of defective eyesight.

Respondent further, as charged, "in order to aid in the sale and distribution of its system and appliance \* \* \* has adopted as its corporate name, 'Natural Eyesight Institute, Inc.,' the facts being, it "is not an institute, in that it does not conduct a place where research or scientific investigation is conducted or where instruction is given; nor is there connected with respondent any person who has had training for the diagnosis or treatment of abnormal eye conditions."

Said acts and things done by respondent, as charged, "in connection with the representations, designation and description of its system, appliance and status, as hereinbefore set out, have the capacity and tendency to mislead and deceive the purchasing public into the belief that the respondent's system and appliance will obtain the results claimed for it by respondent, and that respondent is an institute wherein scientific investigation and research covering abnormal eye conditions is carried on"; 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, Natural Eyesight Institute, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent entered appearance and filed its answer. Thereafter hearings were held at the city of Los Angeles, Calif., and evidence, both in support of the complaint and in defense, was introduced before a trial examiner duly appointed by the Commission, beginning July 25 and closing August 4, 1932. All of the evidence was recorded, duly certified and transmitted to the Commission. The respondent waived oral argument. The proceeding has been submitted on briefs in support of the complaint and on behalf of respondent and has been brought on for final determination.

Now, therefore, the Commission having duly considered the pleadings, the report of the trial examiner and exceptions thereto, the

briefs and the record herein and, being duly 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its principal place of business is in the city of Los Angeles in said State. For five years respondent has been, and now is, engaged in the sale and distribution of a course of instructions in seven pamphlets and certain charts, and a piece of apparatus designated by respondent as the "Natural Eye Normalizer", which course of instructions and apparatus are together known and sold by respondent as its "Natural Eyesight System", for cure of defects of vision. More than five thousand sales of the said "system" have been made by respondent to both professional and lay buyers. The price thereof is \$25 and is paid subject either (1) to refund by respondent on customer's demand made, with the return of the "system", not later than 30 days after delivery, (2) to refund four months after delivery upon assurance that customer has used the "system" at least 15 minutes daily for 4 months and has failed to discard his glasses, or (3) to refund between 12 and 15 months after the delivery thereof to the customer, upon return of the system. Refunds made have been less than 9 percent of the total sales of the system. The advice and directions contained in the pamphlets forming part of the said Natural Eyesight System, including those for the use of the Natural Eye Normalizer, are precisely the same irrespective of the particular type of defect of vision the individual customer may have. Respondent does not give advice to customers purporting to adapt or adapting its system to any individual ocular need of individual customers. The said system includes advice as to hygienic living in general and mental science.

PAR. 2. In the ordinary course and conduct of its said business respondent, as a means of obtaining customers for the said Natural Eyesight System, has caused advertising matter to be inserted in magazines and other periodicals having a national circulation. Also in order to obtain customers for said system respondent sends circular and other advertising matter from its office in California to persons located in all parts of the country who answer said magazine and periodical advertisements. Upon making sales of the said system respondent transports, or causes to be transported, its said Natural Eyesight System from its said place of business to other

localities, partly within the said State, but chiefly in States other than California, in all parts of the country.

PAR. 3. Respondent in its said advertising so issued to secure customers informs the public that by the purchase and use of its Natural Eyesight System customers will be enabled to avoid the purchase and use of glasses stating, among other numerous similar representations, as follows:

Millions of people are wearing glasses, but you don't have to wear them to see with, *unless you want to*.

*Why Glasses are Unnecessary* \* \* \* Specifically speaking, glasses are unnecessary because there is nothing that glasses do that the eyes cannot be taught to do better. All that glasses do is to relieve the eye muscles and eye lenses of their job of focusing light rays upon the retina of the eyes. \* \* \*

*The Unanswerable Argument—Divorce your spectacles! See without glasses!* The Natural Eyesight System makes them unnecessary. Thinking thousands are using this New Knowledge of the Eye, discarding their glasses and having more satisfactory vision without them than they ever had with them. Skeptics may say "Bunk", but they said the same thing to the man who was born blind 2,000 years ago, but he came at them with an unanswerable argument when he said "One thing I know, that whereas I was blind, now I see" (John 9:25).

The *Natural Eyesight System* makes glasses unnecessary.

The positive proof is now before your very eyes *Read on!* \* \* \*

The Natural Eyesight System corrects eye defects—simply, safely, satisfactorily—*without glasses*.

Science has solved the Seeing Problem, just as it has solved so many other problems, and it is no longer necessary to wear glasses. There is a better way to see and this "better way" is found in the Natural Eyesight System.

In fact, most people can practically restore their eyes and get rid of glasses in 90 days or less, if they will give a little time daily to the work.

When we say that the Natural Eyesight System saves sight, rebuilds eyes and makes glasses unnecessary, we mean just what we say. We mean that the Natural Eyesight System gives you a better pair of eyes—eyes that see better, look better and feel better.

PAR. 4. Moreover, in its advertising so issued to secure customers, respondent states with respect to specific defects of the eye, among numerous similar representations, as follows:

The Natural Eyesight System accomplishes its results through the removal of the *causes* of defective eyesight, thus correcting nearsightedness, farsightedness, astigmatism, old age eyes, weak eyes, undeveloped eyes, squint, cross-eyes, muscle imbalance, eye muscle trouble, and other eye defects. The system is used for the various eye defects for which spectacles are usually fitted and worn.

We realize that we are making some startling statements when we say that Nearsightedness no longer is necessary; that astigmatism is no longer necessary; that eyestrain is no longer necessary; that farsightedness is no longer necessary; that weak eyes are no longer necessary; that eye muscle trouble is no longer necessary; and that even failing vision due to advancing age is no longer necessary. \* \* \*



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## Findings

This system overcomes—

Nearsight	Undeveloped eyes
Farsight	Failing vision due to age
Astigmatism	Squinting
Eyestrain	Eye muscle trouble
Weak eyes	Cross-eyes, etc., etc.

*Buy the Natural Eyesight System Once and You Solve Your Eye Problem for Life.*

PAR. 5. Furthermore in its advertising so issued to secure customers, respondent states with respect to its said Natural Eye Normalizer, among numerous similar representations, as follows:

It marks the dawn of the Age of Real Vision and the passing of the Age of Spectacles.

Send for *free* information for telling how Revolutionary Invention makes it easy to correct Nearsightedness, Farsightedness, Astigmatism, Eye Strain, Weak Eyes, Failing Vision, Old Age Sight, Eye Muscle Trouble, Etc., *at home without glasses.*

The *natural eye normalizer* is a highly scientific, hand-operated instrument for self-applied treatment of the eyes, for the correction of all eye defects, such as nearsightedness, farsightedness, astigmatism, old-age eyes, eye muscle trouble, eye strain, etc., and for conserving natural eyesight and keeping good eyes fit.

With this wonderful instrument, which is included in the Natural Eyesight System, now available for home use, no individual needs to face a future of steadily failing vision, with possible helplessness as an ultimate consequence of loss of eyesight.

SEE WITHOUT GLASSES!

Natural Eyesight System Makes Them Unnecessary—Now Used in Over Thirty Countries—Send for information *free* for telling how Revolutionary Invention makes it easy to correct Nearsight, Farsight, Astigmatism, Eye Strain, Weak Eyes, Failing Vision, Old Age Sight, Eye Muscle Trouble, etc., *at home without glasses.*

PAR. 6. There are at least two schools of theory and professional practice in the treatment of defects of vision, according to the record herein, namely, the so-called orthodox school of medicine and ophthalmology and the so-called school of "natural" methods. Counsel supporting the complaint herein called to the stand oculists, practitioners of the former school, and respondent called osteopathic doctors and optometrists, practitioners in the main of the latter school; certain of respondent's expert witnesses are also licensed to practice medicine and surgery. The respondent's said Natural Eyesight System follows mainly the theory, and advises in several respects the use by its customers of the methods, of the latter school. The evidence as to the merits of the methods of treating defects of vision set forth in respondent's course of instructions, is radically conflicting. Witnesses belonging to the "orthodox" school testified

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that there is merit in the hygienic and psychological advice given in respondent's system, but that defects of refraction cannot be removed by the methods advised by respondent's system, that the latter methods cannot remove necessity for the use of glasses caused by these defects, and that massage by the Natural Eye Normalizer or otherwise will not alleviate these defects. Witnesses for the defense testified to the contrary as to the benefit of natural methods in cases of defects of refraction and declared that in numerous cases of such defects the need for glasses can be obviated by treatment, adapted to the needs of the individual patient, by practitioners of the school of so-called natural methods. They testified that by these methods the vision of patients generally can be improved and both professional and lay witnesses for the defense cited instances of great improvement from natural methods including cases of defects of refraction. Witnesses supporting the complaint declared that many instances of apparent improvement in refraction are due to the patient's recovery from physical disease or disability and the restoration of vision incident to a return to normal health. Other numerous instances of successful removal of glasses, they testified, are due to an inadvertent previous sale of glasses to persons for whom glasses should not have been prescribed.

PAR. 7. The Commission finds it unnecessary to decide the differences of opinion between the experts of the two schools of theory and practice described hereinabove in paragraph 6. The testimony for the defense admitted, and to such extent corroborated the evidence in support of the complaint herein and accordingly the Commission finds, as follows:

(a) That in a substantial majority of cases, where patients have used glasses for defects due to nearsightedness, farsightedness, astigmatism, advancing years or cross-eyed conditions, it is not possible through said "natural" methods to remove these defects or so far to alleviate them as to make it possible successfully to remove glasses;

(b) That the customers of respondent, in attempting to apply to themselves the Natural Eyesight System under the same instructions, regardless of the respective causes of their various defects of vision, can attain a substantially smaller average benefit and improvement than are obtainable from so-called natural methods of treatment, when these methods are administered by skilled practitioners adapting them to the specific individual ocular conditions of the patient; and

(c) That the respondent's Natural Eye Normalizer is not an instrument of great therapeutic value but one merely of mechanical massage giving results inferior to skilled massage by hand.

PAR. 8. Respondent by its corporate name and constant use thereof represents itself to be an institute. No clinic, research work, or experimentation, however, is carried on by respondent, nor does it have any optical equipment. Respondent seldom learns what defects of vision any customer has or believes himself to have and never makes diagnosis of defects of the eyes. Its officers and employees do not come into contact with its customers nor has respondent any medical advisor or oculist in its organization or employ. Respondent bears no relation to its customers of a professional, or other than commercial, character. Respondent is not an organization for the promotion of learning, art, or science, and is not organized for work of a scientific or literary character. Respondent is not an institute.

PAR. 9. There are various concerns other than respondent which advertise and sell courses of instruction for the relief, through so-called "natural" methods, of defects of refraction, partly to professional and partly to lay customers in the regular course of interstate commerce. These concerns and respondent are in substantial competition. There are also concerns which manufacture and sell optical lenses for fitting into glasses and still others which sell glasses without themselves manufacturing, in the regular course of both interstate and intrastate commerce. In its representations to the general public and to prospective customers, as hereinabove in paragraphs 2 to 5, inclusive, set forth, respondent seeks to secure as customers those who need, or believe themselves to need, original or replacement glasses. Respondent and concerns vending glasses seek many of the same customers and cannot simultaneously make sales to them. Respondent offers its course as a substitute for the purchase of original or replacement glasses and offers substantial competition to concerns selling lenses.

PAR. 10. The representations described and partly set forth hereinabove in paragraphs 2 to 5, inclusive, and 8 are issued by respondent to the public and to prospective customers for the purpose of inducing the public to buy respondent's Natural Eyesight System in lieu of purchasing glasses. These representations are untrue and misleading and deceptive to the public. They result in the purchase by customers of respondent's said system on the part of persons who would not otherwise purchase it, and might and in numerous instances would purchase other courses of instruction or glasses in lieu of respondent's system.

## CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings 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."

ORDER TO CEASE AND DESIST<sup>1</sup>

This proceeding having been considered by the Federal Trade Commission upon the pleadings, the oral and documentary evidence received, the report of the trial examiner, the exceptions of respondent to said report and the briefs, 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", and the Commission having issued an order to cease and desist on the 9th day of June 1933, and it now appearing desirable to modify in some respects the prohibitions of the said order to cease and desist,

*It is now ordered*, That said order of June 9, 1933, be and the same is hereby set aside and vacated; and

*It is further ordered*, That respondent, Natural Eyesight Institute, Inc., its agents, representatives, and employees, in offering for sale or selling its system for correcting defects of vision, now designated by respondent as its Natural Eyesight System, in interstate commerce, shall cease and desist from representing orally or in writing as follows:

(1) That there is nothing which glasses do that the eyes cannot be taught to do better; and

(2) That respondent's Natural Eye Normalizer has therapeutic value other than that of a mechanical means for the massage of the eyes; and from making representations of the same meaning and effect; and

(3) That, as a result of the purchase and use of respondent's Natural Eyesight System or its Natural Eye Normalizer, those who have used glasses for defects due to nearsightedness, farsightedness, astigmatism, advancing years, or cross-eyes, can, in general or in the majority of instances, remove these ocular defects or can thereby be relieved of the necessity for wearing glasses, or that most people

<sup>1</sup> Substitute order.

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suffering from said defects can get rid of glasses in 90 days or any other period; and from making representations of the same meaning and effect;

*Provided, however, that,* Inasmuch as the question whether such defects can be removed and such relief obtained in certain instances through the use of respondent's Natural Eyesight System is a matter upon which expert opinion differs, as is shown in the evidence in this proceeding, nothing in this order contained forbids respondent from representing that in certain instances such defects have been or can be corrected and glasses discarded as a result of the use of respondent's Natural Eyesight System.

*It is further ordered,* That respondent shall, within 90 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 and conformed to the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
HOWARD B. DROLLINGER

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

*Docket 1868. Complaint, Oct. 23, 1930—Order, June 16, 1933*

Consent order requiring respondent, his agents, employees, etc., in connection with the advertising, offering for sale, and sale, in interstate commerce or in the District of Columbia, of a Solenoid belt or device known as Ion-I-Zer, to cease and desist from representing in any manner whatsoever that the said belt or device or any similar device or appliance designed or intended to operate through exposure of a human subject to a low-frequency alternating magnetic field, without any physical conductive connection of such subject in the circuit, has any physical therapeutic effect upon the subject by reason of the said magnetic field, or that it is calculated or likely to aid in the prevention, treatment or cure of any human ailment, weakness, or disease through the application of such low-frequency alternating magnetic field.

*Mr. E. J. Hornibrook* for the Commission.

*Mr. Arthur E. Cook*, of Washington, D.C., for respondent.

COMPLAINT

Acting in the public interest and 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 Howard B. Drollinger, hereinafter referred to as respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of said act, and states charges in that respect as follows:

PARAGRAPH 1. Respondent, Howard B. Drollinger, is an individual and is now and for several years last past has been carrying on the business of manufacturing and selling an electrical device, which device consists of coils of wire in circular formation and covered with cloth or rubber and when attached to an ordinary alternating household electrical current is and was claimed by respondent to create a magnetic field, and such magnetic field so alleged to be created is and was purported by him to have curative and therapeutic value and action in the treatment of diseases and ailments of the human body when applied to the same.

The said device was manufactured, advertised and sold by respondent in and from Los Angeles, Calif., under the name of "Life Saver" from about the year 1925 to about the year 1928, and was

manufactured, advertised, and sold by respondent in and from the city of Chicago for a short period in the year of 1928 under said name of "Life Saver", respondent then moved to the city of Cleveland, Ohio, and manufactured, advertised, and sold said device for about eight months in and from said city of Cleveland, under the name "Ion-I-zer." The said device is now manufactured for the respondent in the city of Cleveland, Ohio, and since about June 1929, respondent has advertised, distributed, and sold the same from his principal place of business at 1719 Lexington Avenue, New York City, State of New York, under the said name of "Ion-I-zer."

PAR. 2. Respondent, since the said year, 1925, has caused said device to be sold to purchasers thereof who resided in States other than the States of California, Illinois, Ohio, and New York, and when so sold to such purchasers has caused the same to be shipped from his principal places of business in said named States into and through other States to the purchasers at their several places of residence or location.

When orders for said device are now received from purchasers residing outside the States of New York and Ohio, the said devices are packed at Cleveland or New York City, as the case may be, and shipped therefrom to the purchasers thereof into and through other States of the United States to their several places of location or residence.

PAR. 3. In the course and conduct of said business respondent is in competition with other individuals and corporations engaged in the sale of sundry medicinal remedies and surgical and electrical instruments and appliances used in the treatment of the sick and injured in commerce between and among various States of the United States.

PAR. 4. The respondent solicits and seeks and has solicited and sought the sale of said device to the public located throughout the States of the United States, reaching said public through and by means of radio talks, advertisements in magazines having general circulation in the States of the United States, in newspapers, and letters, through and by means of circulars, booklets and other literature and through and by means of employees, solicitors and agents.

The respondent, in order to induce the public to purchase said device, makes and has made many false, misleading, and deceptive statements concerning said "Ion-I-zer" in such radio talks, in such magazines, newspapers, letters, circulars, booklets, and other literature and through such employees, solicitors and agents, among which are the following:

(a) That Dr. S. C. Drollinger, M.D., was as late as July, 1929, achieving splendid success in New York with "Ion-I-zer" in treating many chronic diseases,

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(b) That said device is "a new, wonderful, scientific invention",

(c) That the said device has therapeutic value and effect and is a cure and proper treatment for almost every human disease or ailment, including adenoids, anemia, arthritis, congestion, constipation, cystitis, debility, dyspepsia, neuritis, rheumatism, bladder troubles, bronchitis, colds, catarrh, colitis, diabetes, dropsy, gastritis, prostrate troubles, eczema, high blood pressure, insomnia, indigestion, kidney trouble, liver complaints, nervous debility, neuralgia, obesity, piles, sciatica, stomach trouble, hemorrhoids, heart disease, hay fever, headaches and varicose veins.

PAR. 5. (a) The Dr. S. C. Drollinger, M.D., mentioned in subdivision (a) of paragraph 4 hereof, departed this life in July, 1927.

(b) The said device is not a scientific invention neither is it a new or wonderful invention.

(c) That said device will not cure, nor is it proper treatment for any of the diseases or afflictions mentioned in subdivision (c) in paragraph 4 hereof, nor will it cure or relieve disease, sickness or ailment of any kind or nature.

(d) That the device in question, when used as directed, or otherwise, is incapable of transmitting energy or remedial force to the human body in such an amount as to have therapeutic value or effect.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations used by respondent, as in this complaint heretofore set forth, have and had the capacity and tendency to and do, induce the public to purchase and use respondent's device in the belief that said statements and representations are true.

PAR. 7. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors and consist of 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 on the complaint of the Commission and the answer of the respondent, and the respondent thereupon having been granted by the Commission permission to withdraw his answer filed herein on the 20th day of November, 1930, and the respondent having so withdrawn his answer and filed in lieu thereof an answer consenting that the Commission may make, enter, and serve upon him an order to cease and desist, and the Commission being fully advised in the premises,



*It is now ordered,* That respondent, Howard B. Drollinger, his agents, employees, and representatives, in connection with the advertising, offering for sale, and sale, in interstate commerce or in the District of Columbia, of a Solenoid belt or device, heretofore known as Ion-I-Zer, cease and desist from representing in any manner whatsoever that the said belt or device or any similar device or appliance designed or intended to operate through exposure of a human subject to a low-frequency alternating magnetic field, without any physical conductive connection of such subject in the circuit, has any physical therapeutic effect upon the subject by reason of the said magnetic field, or that it is calculated or likely to aid in the prevention, treatment, or cure of any human ailment, weakness, or disease through the application of such low-frequency alternating magnetic field.

*It is further ordered,* That the said respondent, within 60 days from and after the date of the service on 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 and has complied with the order to cease and desist hereinabove set forth.

## IN THE MATTER OF

SAM GILMAN, DOING BUSINESS UNDER THE TRADE  
NAME AND STYLE OF GILMAN HAT COMPANYCOMPLAINTS, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 6 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1895. Complaint, Jan. 19, 1931—Decision, June 17, 1933*

Where an individual engaged in the purchase of used and discarded men's felt hats and in the cleaning, renovation, and reequipment thereof, with new hat ribbons, sweatbands, and linings, with typical designs and words or legends thereon, under a process and treatment which gave said hats the appearance of new,

Sold the same with nothing thereon to advise the uninformed as to their made over character, through wholesale dealers and agents, whose retail dealer customers (1) included such establishments as customarily deal in new hats and/or other merchandise, (2) made no particular, if any, revealing, distinction in their display and sale of the new, as compared with the cheaper, less durable, and inferior renovated article, and (3) offered and sold the latter to the ultimate consumer, making the customary demand for a "hat", in ignorance of the comparatively new and rapidly growing business in hats renovated as above set forth, and their marketing through retail channels theretofore associated in the public mind with sale of new hats exclusively, without, ordinarily, advising him as to the true nature of the article being sold him;

With the result that wholesale and retail dealers were enabled to sell said hats as and for new, and the ultimate purchaser or consumer was deceived and misled into buying as and for a new and unused hat, one discarded and renovated, as above set forth, notwithstanding the prejudice or distaste frequently or customarily felt for such a purchase, and trade was diverted from wholesale and retail dealers in, and manufacturers of, the necessarily more costly new felt and wool hats, and from the "dry shop" hat body manufacturers or finishers, who were variously unable to meet the competition of the renovated article misleadingly sold as above set forth, and whose business was seriously injured or destroyed thereby, to their prejudice and injury, and that of the industry and purchasing public:

*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* for the Commission.

*Mr. Samuel L. Miller*, of New York City, for respondent.

*Mr. John Knight Holbrook, Jr.*, of New York City, for Hat Institute, Inc., *Amicus Curiae*.

## 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 Sam Gilman, doing business under the trade name and style of Gilman Hat Co., hereinafter referred to as respondent, has been and now 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, Sam Gilman is an individual doing business under the trade name and style of Gilman Hat Co., having his office and principal place of business at 197 Greene Street, in the City of New York, State of New York, where he has been for more than one year last past engaged in the business of selling and distributing men's felt hats of the character and in the manner hereinafter mentioned to jobbers and wholesale dealers located at points in the various States of the United States and the District of Columbia. Respondent causes said hats, when so sold, to be transported from the City of New York, State of New York, through and into other States of the United States and the District of Columbia, to the said jobbers and wholesale dealers thereof at their respective points of location. In the course and conduct of its said business as aforesaid, respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of men's felt hats in interstate commerce among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business respondent buys second-hand, old, used, and discarded men's felt hats, which hats are in some instances sold by respondent to jobbers and wholesale dealers in the same condition they were in when bought, and in other cases are renovated and sold by respondent to said jobbers and wholesale dealers. All hats which are renovated by respondent are first sent to a dry-cleaning establishment, where they are thoroughly dry-cleaned and returned to respondent. Said hats are then steamed, ironed and shaped by respondent at its place of business. The poorer grade of hats are sold by respondent to its customers without being further treated. The higher quality hats are relined and fitted with new ribbon bands, sweatbands and size labels, and then sold by respondent to jobbers and wholesale dealers, who resell them to retail dealers. Said new relinings and sweatbands are purchased by respondent from the manufacturers thereof, and bear various trade names, designs, devices, and descriptive wording.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondent, and fitted with new trimmings, as described in paragraph 2 herein, have the appearance of new hats which have never been worn, and said hats are sold by respondent to jobbers and wholesale dealers without anything on or about said hats

to indicate that such hats are in fact second-hand hats which have been renovated and made over by said respondent. Said hats are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said hats have been previously worn, and then renovated and made over, and under such circumstances as to indicate that they are new hats.

The cost to respondent of obtaining, renovating, and making over said hats as aforesaid is much less than the cost to hat manufacturers of manufacturing new hats of similar quality, and respondent is thereby able to sell said hats to jobbers and wholesalers at substantially lower prices than manufacturers of hats can sell hats of the same or similar quality to jobbers and wholesale dealers.

PAR. 4. It is the common belief and understanding among wholesale and retail dealers, and the purchasing public, that hats having the appearance of new and unused hats, as do hats distributed by respondent, and sold by respondent and those dealing in men's hats without anything on or about said hats to indicate that such is not so, are in fact hats which are new and unused, and have never been worn or used by anyone previously; and said wholesale and retail dealers, and the purchasing public, when buying hats having the appearance of new and unused hats, and without anything on or about said hats to the contrary, are entitled to receive new and unused hats, and not second-hand, old, used, and discarded hats which have been renovated and made over. The acts and practices of respondent as hereinabove set forth, are calculated to, and do, have the capacity and tendency of inducing many wholesale and retail dealers, and many of the purchasing public, to purchase the said second-hand, old, used, and discarded hats which have been renovated and made over by respondent, in the mistaken belief that they are purchasing new and unused hats, and tends to and does unfairly divert trade to respondent from concerns engaged in the manufacture and sale of hats in interstate commerce throughout the various States of the United States and the District of Columbia.

PAR. 5. The above alleged acts and practices of respondent are each and all of them 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 approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### 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 its complaint upon the respondent above named, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance, and having filed his answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and counsel for respondent, and brief *amicus curiae* and oral argument by counsel for The Hat Institute, Inc., the trade association for the hat industry, in support of the complaint, 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, Sam Gilman, is an individual doing business under the trade name and style of Gilman Hat Co., and has his place of business at 197 Greene Street, in the City of New York, State of New York, where for about seven years last past he has been engaged in the business of manufacturing made-over men's felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. Respondent causes said hats, when sold, to be transported from his aforesaid place of business in the City of New York, State of New York, to purchasers thereof at their respective points of location, in the several States of the United States and the District of Columbia.

In the course and conduct of his business as aforesaid respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of his aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs from 50 to 75 employees in his place of business who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondent sells about 50 percent of his made-over hats direct to jobbers and wholesale dealers, and the remaining 50 percent through Van Orden and Bickner, sales agents. He does not at present send out any advertising literature to customers and prospective customers, but formerly he

did. The sales agents and the wholesale dealers and jobbers do their own advertising of the hats.

Respondent sells his made-over hats in two grades, at \$9 per dozen and \$12.50 per dozen, less 10 percent discount, with a few being sold at \$13.50 per dozen. The principal difference between the grades of the hats is in the width of the brim, those with wider brims selling at higher prices. Some of the lower priced hats may in addition have slight imperfections in the felt. In the years prior to 1930 respondent sold his made-over hats for considerably higher prices. In 1929 the volume of business done by respondent amounted to between \$125,000 and \$130,000, and in 1930 it amounted to approximately \$70,000.

PAR. 3. The principal material used in the manufacture of men's hats sold in this country is felt, which is made from the fur of animals. There are a comparatively small number of men's hats manufactured from wool, but these hats are inferior in quality to fur felt hats, and cheaper in price. The principal fur used in the manufacture of the felt is rabbit or cony fur, although beaver fur and nutria are also used to a considerable extent, beaver being almost exclusively used in the highest priced men's felt hats. The rabbit or cony fur is obtained from England, Australia, France, Poland, and other European countries. The darker colored felt hat bodies are made from British or Australian rabbit fur, while the lighter colored bodies are made from cony, or white rabbit, fur secured principally from France. Many new hat manufacturers purchase the fur from fur cutters, who clip it from the pelt, pack it and sell it to the hat manufacturer. Some of the larger manufacturers, such as the Frank H. Lee Co. of Danbury, Conn., and John B. Stetson Co., of Philadelphia, Pa., buy the pelts and clip their own fur.

The pelts are seasoned for a certain length of time, and then the fur is clipped from them by machines, cleaned, and the hair separated from the fur. In manufacturing a new man's felt hat a certain amount of fur is selected by weight. Usually several different kinds of fur are used in a hat, depending on the color, weight, or other characteristics of the finished hat. Each manufacturer has his own formulae of mixtures used in the hats manufactured by him. The fur selected is blown by a machine into a chamber in which there is a truncated perforated cone, and the fur drops on this cone and is uniformly distributed over it. In its first stage the hat is cone-shaped and about 3½ feet high. After its removal from the cone it is dipped in hot water and shrunk by various manipulations by skilled workmen while saturated with hot water, put on a smaller cone, and the same process repeated until finally the hat is the desired size for shaping into a finished hat. It is then put on a blocking form and given its first shaping. Various other shaping operations follow, and

the hat is dyed when necessary. It is then ready for the final operations of pouncing, ironing, luring, trimming, and flanging. Pouncing consists of rubbing off the rough hairs on the body of the hat, and luring is the process of smoothing the hat with a cloth, and is the final process before trimming. Trimming consists in sewing silk bands on the outside of the hat, and leather sweatbands and linings on the inside. Flanging is the process of giving permanent shape to the brim of the hat, and is usually done after the hats have been trimmed. All of the operations described above are performed by highly skilled workmen.

Many manufacturer's of men's felt hats in this country do not make the hat bodies, but buy them from manufacturers of such bodies and do the finishing in their own plants. These manufacturers are known in the trade as "dry shops".

PAR. 4. Men's made-over felt hats have been manufactured and sold in the United States for more than twenty years, but it has only been during the past six or seven years that their sale has had any substantial effect on the hat industry as a whole. Prior to that time the made-over hats were principally sold in second-hand stores, and many of them were exported to foreign countries. It was not until an improved method of cleaning the old hat bodies was perfected that it has been possible to remake and refinish the old hats so that they are an important factor in competition with new hats.

The first step in the manufacture of made-over men's felt hats is the purchase of the old, worn, used, and discarded hat bodies. There are regular dealers in such old hats located in Chelsea, Mass., New York City, and other cities. The largest dealers in men's old, worn, used, and discarded felt hats are located in Chelsea, Mass., which city seems to be the principal source of supply of such hats. These dealers in old hats buy them from many sources, including trashmen, junk dealers, peddlers, second-hand clothing collectors, and retail stores. The hats purchased from retail stores are usually hats which have been left in the stores by men who have purchased new hats. In some few instances out-of-style hats which have never been worn are purchased from retail stores, but these hats are generally sold without being made over.

The old, worn, used, and discarded men's felt hats purchased by the dealers as aforesaid are sorted by them according to color, quality, and condition, and are packed in bales and sold to made-over hat manufacturers, such as respondent. Respondent purchases his old hat bodies from dealers in New York City, paying from \$2.50 to \$3 per dozen for them.

PAR. 5. The old, worn, used, and discarded men's felt hats are received by respondent packed in bales. Respondent immediately sends them to a dry-cleaning establishment in Brooklyn, N.Y., where

they are put through a vacuum cleaning process. The hats are turned inside out, put in a vacuum cleaning machine, and the vacuum turned on. Then 500 gallons of benzine are put in and the machine started revolving. The benzine circulates all around the hats, and in the course of about 10 minutes runs out of the machine, leaving the hats thoroughly cleaned. The hats remain in the machine for some time after the benzine has run out. The machine operates slowly because it softens the felt in the hats if it revolves rapidly, or if the hats are left in it too long. Usually the trimmings are not removed from the hats before they are put in the machine, but some manufacturers, including respondent, do remove all trimmings before sending the hats to the cleaner.

When the cleaned hats are returned respondent sorts them as to colors, the dark and light hats being separated. The brims are stiffened with shellac and the crowns are stiffened with gum tragacanth. They are then blocked by steam and put on an electric ironing machine for the shaping of the crown. The hats are then taken to the finishers for pouncing, which consists in smoothing the rough hairs of the body of the hat. Powder is then put on the hats with a wet brush and rubbed in so as to give the hats a uniform color. They are then sent to the trimmers, who sew new hat bands, sweat leathers, and linings on the hats. The hats are then flanged, which consists in shaping the hats to conform to the style which the manufacturer desires to make. The last process is that of luring in which the whole hat is smoothed with a piece of cloth. The hats are then packed in boxes for shipment to customers.

Some of the old hats bought by respondent are in too bad a condition to justify putting through the above process, in which case they are merely cleaned and sold at a cheaper price than those that are made over.

PAR. 6. Linings of various materials are used in practically all the new men's felt hats manufactured and sold in this country. The linings, leather sweatbands, and ribbons used by respondent on the made-over hats manufactured and sold by him are new, and are bought from regular dealers in such trimmings. These dealers supply both new and made-over manufacturers. All hat linings used in new and made-over men's hats have printed on them a name or design, known in the trade as "dies". These dies are imprinted on the linings by the dealer at the order of the manufacturer. New hat manufacturers usually order dies consisting of a trade name, trade mark, or name of the manufacturer, jobber, or retail dealer, together with a design of some kind. These are known in the trade as "special dies". Many dies, however, consist of general names or terms, such as "Select Quality", "Felts De Lux", and "Aristocrat", together



with a fanciful design. These are known as "stock dies", and are used by both new and made-over hat manufacturers. Dealers in linings have "stock dies" printed in quantities and keep them on hand for sale to new and made-over hat manufacturers. In some instances a dealer will buy a job lot of linings from a manufacturer which bears the name or trade mark of a manufacturer, jobber, or retail dealer, and which for some reason, the manufacturer is unable to use. Such linings will be sold to made-over hat manufacturers by the dealer without changing in any way the name of trade mark appearing on the linings.

Respondent buys his linings from dealers in New York City as he needs them, and these linings are imprinted with "stock dies". Respondent does not specify any particular names to be printed on the linings, but takes whatever the dealer has on hand. There is no uniformity of name or brand used by respondent, as respondent does not sell any hats under brand names. Respondent has used linings in his made-over hats bearing the names: "Felts De Lux—Custom Made—Mark of Quality"; "Supreme Quality—Made in U.S.A.—Distinctive Headwear—Styled in New York"; and at the time of taking testimony in this proceeding was using linings bearing the name "Supreme Styling".

Leather sweatbands are purchased by respondent from dealers in such articles, and bear no names or designs when purchased. Respondent has names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which he is using at the time.

PAR. 7. Respondent sells the made-over hats manufactured by him to jobbers and wholesale dealers through sales agents and direct. There is no word of any kind on the made-over hats manufactured and sold by respondent to indicate that the hats are made-over hats, and not new hats. The selling agents, Van Orden and Bickner, of New York City, send out circulars to wholesale dealers and jobbers, in which the hats are described as made-over hats. The wholesale dealers and jobbers who buy made-over hats direct from respondent know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondent's place of business and buy the hats, and in every case respondent advises such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than new men's fur felt hats can be sold for.

In soliciting business from his customers, respondent sends out letters in which he offers his hats for sale. In such letters no mention is made that the hats are made-over hats. In invoicing made-

over hats to purchasers no mention is made that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondent have the appearance of new hats, and respondent endeavors to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats.

A number of made-over hats manufactured by respondent, together with a number of made-over hats manufactured by another made-over hat manufacturer, were introduced in evidence and marked as exhibits in this proceeding. A new hat manufactured by a new hat manufacturer was also introduced in evidence and marked as an exhibit. All these hats were then mingled and handed to a number of witnesses from different branches of the hat trade with the request that they designate which hats were new and which were made over. The witnesses asked to make this test consisted of the president of one of the largest companies manufacturing men's felt hats in the United States, a man with 46 years' experience in the hat business, and who has personally worked in all the various processes of manufacture of men's felt hats; three managers of hat stores, and one wholesale hat dealer, who has been in the business since 1892.

Not one of these witnesses was able to correctly distinguish between all of the new and made-over hats, even after thorough and careful examination. Nine hats, eight being made-over hats and one a new hat, were examined by the hat manufacturer, and five hats, four being made-overs and one new, were examined by the other witnesses. All of the witnesses identified some of the hats correctly, but none of them designated all of them properly. The new hat manufacturer designated the new hat as a made-over hat, and picked two of the made-over hats as being new hats. One of the retail hat store managers and the wholesale hat dealer picked all of the hats as being made-over hats. Another retail hat store manager designated three of the hats, including the new hat, as being new hats, and two of the hats as made-over hats. The other retail hat store manager picked four of the hats, including the new hat, as being made-over hats, and one made-over hat as being a new hat.

PAR. 9. It is the invariable custom of men when buying a hat, either in a store selling hats exclusively or in a store selling hats and other articles of merchandise, to ask for a "hat", and never ask for a "new hat". Witnesses connected with four well-known chain store organizations selling men's hats in New York City and in other cities of the United States, and the buyer of men's and women's hats for

a chain department store organization operating 1,472 stores in cities and towns in all parts of the United States, testified in this proceeding. These stores sold men's new fur felt hats at varying prices, the lowest being \$1.98, and the average being about \$3. Not one of these witnesses knew of a case where a man purchasing a hat in any of their stores had asked for a "new hat". They simply asked for a "hat".

Twelve representative men, selected at random and not advised in advance as to the nature of the proceeding or the questions to be asked them, were called as witnesses in this case. They included security and advertising salesmen, an accountant, business men, a private detective, instructors, and law clerks. They all testified that they never asked for a "new hat" when making a purchase of a hat, but always asked for a "hat", and that they expected to receive a new hat, and would feel that they had been deceived if the dealer sold them a made-over hat without advising them that the hat was made over. They testified that they had a prejudice against wearing a hat which had been previously worn by some one else and discarded, even though it had been thoroughly cleaned and fitted with new trimmings.

Not one of these men knew that there was such a business as the made-over hat business, or that men's old, worn, used, and discarded hats were made over and resold to the public in stores which handled men's hats.

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate new men's fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Select Quality", "Custom Made", "Mark of Quality", "Supreme Styling", "Distinctive Headwear", and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondent can be sold to retail purchasers as new

hats without the purchaser knowing that they are in fact made-over hats.

PAR. 11. Wholesale dealers and jobbers know that the hats they buy from respondent are made-over hats. Such dealers handle new hats as well as made-over hats, and from their familiarity with the hat business they are able to tell from the prices at which they buy hats those which are made over and those which are new, even if the made-over hat manufacturer does not advise them that the hats are made over. In selling made-over hats to retail dealers, the jobbers, and wholesale dealers do not always advise said retail dealers that the hats are not new hats, but are made over. Wholesale dealers and jobbers sell made-over hats by advertising circulars and catalogs sent to retail dealers, and by traveling salesmen. The salesmen carry samples of made-over hats to show to retail dealers. Some of the wholesale dealers and jobbers sew tickets in the sample made-over hats bearing the word "made-over", or some other word indicating that the hats are not new, and others rely on their salesmen to advise the retail dealers that the hats are made-over hats. In many instances the salesmen do not advise the retail dealers that the hats are made-over hats.

Many wholesale dealers and jobbers of made-over hats offer such hats for sale in advertising circulars or catalogs which are distributed to retail dealers. Such hats are sometimes offered for sale in said circulars or catalogs by themselves, and sometimes together with new hats and hats which have not been worn by anybody, but which are out-of-date because of style or color. Some wholesale dealers and jobbers indicate that the hats are made-over hats in said circulars or catalogs by use of the words "renovated" or "made over", but many of them do not indicate by any word or words, or other description, that the hats being offered for sale are old, worn, used, and discarded men's felt hats which have been made over.

Many wholesale dealers and jobbers engaged in the sale of made-over hats to retail dealers do not indicate in any way on their invoices that the hats being sold are made-over hats, and some retail dealers have bought made-over hats from such wholesale dealers and jobbers without knowing that the said hats were not new hats.

PAR. 12. Made-over hats are sold generally throughout the United States, but the principal sale is probably in the Southern States. Testimony of retail dealers, including small general stores, men's furnishing stores, and a few department stores, located in a number of cities and small towns in a number of Southern States, was taken in this proceeding. Witnesses were called by both sides.

Made-over hats sold in retail stores vary in price from 95 cents to \$2.50, with the largest number being sold at \$1 and \$1.95 each. A few

years ago made-over hats sold for \$2.50 and more apiece. Some retail dealers keep the made-over hats on shelves, sometimes in boxes, with new hats. Other dealers display them on tables by themselves, with a price card stating the price at which they are to be sold. In no instance does the price card advise the purchaser that the hats are made-over hats.

Made-over hats are sold by retail dealers to purchasers in no different manner than are new hats. All of the stores sell new hats as well as made-over hats. The majority of retail dealers do not advise purchasers that the hats are made-over hats, but a few testified that they did tell the purchaser at the time the sale was made that the hat was a made-over hat. Some retail dealers do not say anything about the hats being made-over hats unless purchasers inquire as to why the hats are being sold so cheap, in which event they tell them that they are made-over hats. In an effort to sell higher priced hats, a few retail dealers advise purchasers that the hats are made-over hats and will not give as good service as will new hats.

The Commission finds that a large majority of retail dealers engaged in the sale of made-over hats to the public sell such hats without in any manner advising purchasers that the hats are made-over hats, and that such a method of sale has the capacity and tendency to mislead and deceive the purchasers of such hats into the belief that they are in fact new hats being sold at bargain prices. This results in a stimulation of the market for made-over hats and the curtailing of the market for new hats.

PAR. 13. Old, worn, used, and discarded men's fur felt hats which have been cleaned and fitted with new trimmings by respondent, as described in paragraph 5 hereinabove, are inferior in wearing qualities to new men's fur felt hats. The process of cleaning the old hats loosens the fibers of the felt and allows atmospheric conditions to affect the bodies to a greater extent than they do new felt bodies, the fibers of which are tightly integrated. Many of the old hats have been in contact with wood ashes or other mineral matter after they have been discarded. Any mineral matter will affect any animal matter, of which felt hats are made, and will affect the textile strength of the fur fibers. When the hats are then put through the cleaning process to remove the grease and foreign matter the fibers are loosened and opened up. Gum tragacanth and shellac are used to stiffen the brims and crowns of made-over hats, but upon exposure to atmospheric conditions the stiffening effects are soon lost and the hats lose their shape due to the action of the elements. The felt bodies in made-over hats deteriorate rapidly and the made-over hats will not give as good service as will new hats.

In many cases it is impossible to completely remove stains and dirt spots from the old hats in the cleaning process, and the powder which is rubbed into the hats to cover such spots and other discolorations wears off. In such cases the old spots and stains reappear after the hat has been worn for a time.

Due to the careful treatment given the old hats by respondent during the process of making them over the defects set forth above are not visible by a careful examination, and will not show up until some time after the made-over hat has been worn. It is, therefore, impossible for the purchasing public to protect itself from buying inferior made-over hats unless there is some mark or other indication on the hats advising purchasers that the hats are in fact made-over hats, or unless the retail dealer tells the purchaser that the hat is a made-over hat, which is seldom done.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondent pays from \$2.50 to \$3 per dozen for the old, worn, used, and discarded hats which he buys for use in manufacturing made-over hats.

Five made-over hat manufacturers, including respondent, employ union labor in their factories, but the great majority do not. This respondent pays the following wages in its factory for making over hats:

	<i>Per dozen</i>
Finishing bodies:	
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

It therefore costs respondent \$4.17 per dozen for labor costs in making his cheapest quality made-over hat; \$4.62 per dozen for his better grade; and \$4.42 per dozen for the average made-over hat

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which he makes. Respondent pays \$3 per dozen for the best grade of old hat bodies which he buys, \$2.75 per dozen for the average, and \$2.50 per dozen for the cheapest grade, which makes his highest total labor and body costs for manufacturing finished made-over hats \$7.62 per dozen for the best grade, \$7.17 per dozen for the average, and \$6.67 per dozen for the cheapest grade.

The union scale of wages paid in New York for finishing new men's fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid by respondent for these processes, which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of new men's fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Finished men's fur felt made-over hats can be made by respondent at a cost of at least \$4.15 to \$5.10 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondent and other made-over hat manufacturers.

PAR. 15. The manufacture and sale of men's made-over fur felt hats has greatly increased in volume in the past four or five years. Because such hats are sold to the public in retail stores devoted to the sale of new merchandise, without any mark or words on them to indicate that they are made-over hats, and at much lower prices than are charged for new hats, manufacturers of men's new fur felt hats have lost many of their customers owing to their inability to manufacture and sell new hats at a price to compete with made-over hats.

In some instances, they have had to close their branch factories. Manufacturers of new hats have had to continually decrease prices for their hats, until some of them are selling at cost. Sales of new fur felt hat bodies have decreased, even though prices have been reduced. "Dry shop" manufacturers have reduced their purchases of hat bodies for finishing, due to the competition of made-over hats, some of them have been forced out of business, and others have bought made-over hats for sale to retailers who demand a hat which can be sold to the public at a low price.

Jobbers and wholesale dealers have lost customers because of the sale of made-over hats. Many jobbers and wholesale dealers do not sell made-over hats because they believe that the low price at which these hats sell is detrimental to the hat industry. Many retail dealers demand low-priced hats and because these jobbers and wholesale dealers do not sell them, many of their retail customers buy their supply of made-over and new hats from other dealers who handle such hats. Other jobbers and wholesale dealers have been forced to handle made-over hats against their wishes because of the demand for cheap hats. The sale of new hats by jobbers and wholesale dealers has steadily decreased during the past few years, due to the increased purchase of made-over hats by retail dealers. Jobbers and wholesale dealers who sell new hats cannot compete with made-over hats because of the low prices at which the latter are sold. The competition of the made-over hat not only affects the sale of men's new fur felt hats, but has also resulted in a decrease in sales of wool felt hats, which is a hat made of wool, which is sold at considerably lower prices than for felt hats.

Retail stores handling men's new fur felt hats are losing business because of the competition of made-over hats. These stores are placed at a disadvantage over stores selling made-over hats because the latter stores not only sell the made-over hats at a lower price than new hats can be sold for, but do not inform the purchasers that the hats are made-over hats, and there is nothing on the hats to indicate that fact. The sale of made-over hats by some retail stores forces other retail stores not handling such class of merchandise into price competition with stores selling low-priced and cheap merchandise.

PAR. 16. Respondent sells made-over hats to jobbers and wholesale dealers for resale to retail dealers and the purchasing public without any mark, word, or other indication on or about said hats that they are old, worn, used, and discarded men's fur felt hats which have been cleaned and fitted with new ribbons, linings, and leather sweatbands. Respondent advises jobbers and wholesale dealers to whom he sells that such hats are made-over hats. Many of the jobbers and wholesale dealers in reselling said hats to retail dealers do not advise them



that the hats are made-over hats, and some retail dealers have bought made-over hats without knowing that said hats are made-over hats. The great majority of retail dealers in selling made-over hats to the public do not advise purchasers that the hats are not new hats but are in fact old hats which have been made over.

By the manufacture and sale of made-over hats which have the appearance of new hats, and which do not have on or about them any mark, word or words or other indication showing that said hats are not new hats but are in fact old, worn, used, and discarded hats which have been cleaned and fitted with new ribbons, linings, and leather sweatbands, respondent enables jobbers and wholesale dealers to sell said hats to retail dealers, and retail dealers to sell said hats to the purchasing public, as new hats.

The sale of said made-over hats, in the manner described in the within findings, is injurious to the public and competitors of respondent engaged in the manufacture and sale in interstate commerce of men's new fur felt and new wool felt hats. Such sale has the capacity and tendency to, and does in fact, injure the purchasing public because it misleads, deceives, and induces the public to buy such hats in the belief that they are new hats, and that they will give as satisfactory service in wearing qualities as will new hats. Many men would not buy said hats if they knew they were made-over hats because they would not wear a hat which had been previously worn by someone else, even though it had been thoroughly cleaned.

The sale of made-over hats by respondent has the capacity and tendency to, and does in fact, injure competitors of respondent engaged in the business of manufacturing and selling men's new fur felt and wool felt hats because (1) it diverts to respondent from his said competitors the sale of men's new fur felt and new wool felt hats; and (2) it prejudices the purchasing public against the new hat industry because of the deception and deceit in the sale of made-over hats to the public; and because made-over hats are sold at such low prices that competitors of respondent making men's new hats cannot meet such prices, owing to the higher manufacturing costs required to make new hats, and because said made-over hats are inferior in wearing qualities to new hats.

#### CONCLUSION

The practices of respondent Sam Gilman, doing business under the trade name and style of Gilman Hat Company, 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 commerce, and constitute a violation of

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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, and the testimony taken and briefs filed herein, and oral 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 now ordered,* That the respondent Sam Gilman, doing business under the trade name and style of Gilman Hat Company, his agents, representatives, and employees, in connection with the sale or offering for sale of men's hats in commerce among the several States of the United States, and in the District of Columbia, cease and desist from:

Selling or offering for sale men's old, worn, used, and discarded fur felt hats which have been cleaned and fitted with new ribbons, sweatbands, and linings, unless and until there is stamped upon, affixed or attached to said hats in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said hats are not new hats but are used and worn hats which have been cleaned and made over (e.g., "second hand", "used", or "made over").

*It is further ordered,* That respondent shall within 60 days from the date of the service upon him 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.

## MEMORANDA

The Commission as of the same date promulgated similar findings and orders in eight other cases, one of which, however (Grand Hat Co., Docket 1901), involved as an additional feature simulation of the trade name or brand of a well known hat manufacturer.

Appearances were: *Mr. G. Ed. Rowland* for the Commission; *Mr. Samuel L. Miller*, of New York City, for respondents, along with whom *Mr. Alan G. Trebach*, of New York City, appeared for Prime Hat Co. and *Mr. Max Aronson*, of New York City, appeared for Herman Hat Co.; and *Mr. John Knight Holbrook, Jr.*, of New York City for Hat Institute, Inc., *Amicus Curiae*.

Excerpts from the foregoing findings, with the exception of the Grand Hat case, *supra*, which is published in full (see *infra*, page 399)

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follow; paragraphs and parts of paragraphs which follow substantially verbatim those in the principal case being omitted where their inclusion does not appear to be required to give an adequate idea of the different findings and orders.

## GLOBE HAT WORKS

G. POLINER, an individual, doing business under the trade name and style of Globe Hat Works. (Docket 1896.)

PARAGRAPH 1. Respondent, G. Poliner, is an individual doing business under the trade name and style of Globe Hat Works, and has his place of business at 297 Cherry Street, in the City of New York, State of New York, where for about two years last past he has been engaged in the business of manufacturing made-over men's felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. Respondent causes said hats, when sold, to be transported from his aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location, in the several States of the United States and the District of Columbia.

In the course and conduct of his business as aforesaid respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of his aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs from 10 to 12 employees in his place of business, who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondent sells his hats to wholesale dealers and jobbers, most of whom come to his place of business. He does not send out any advertising literature to customers and prospective customers. The wholesale dealers and jobbers to whom he sells do their own advertising of the hats.

Respondent sells his made-over hats in two grades, at \$6 per dozen and \$9 per dozen, with a few being sold at \$12 per dozen. The principal difference between the grades of the hats is in the width of the brim, those with wider brims selling at higher prices. Some of the lower-priced hats may in addition have slight imperfections in the felt. In 1929 and 1930 the volume of business done by respondent amounted to between \$30,000 and \$35,000, but since then it has decreased because of the lower prices of made-over hats.

PAR. 4. \* \* \* Respondent purchases his old hat bodies from dealers in New York City and Chicago, Ill., and from peddlers who bring the old hats to him, paying from \$1 to \$2.50 per dozen for them.

PAR. 6. Linings of various materials are used in practically all the men's new felt hats manufactured and sold in this country. The linings, leather sweatbands, and ribbons used by respondent on the made-over hats manufactured and sold by him are new, and are bought from regular dealers in such trimmings. These dealers supply both new and made-over manufacturers. All hat linings used in new and made-over men's hats have printed on them a name or design, known in the trade as "dies." These dies are imprinted on the linings by the dealer at the order of the manufacturer. New hat manufacturers usually order dies consisting of a trade name, trade mark, or name of the manufacturer, jobber, or retail dealer, together with a design of some kind. These are known in the trade as "special dies." Many dies, however, consist of general names or terms, such as "Select Quality", "Felts De Lux" and "Aristocrat", together with a fanciful design. These are known as "stock dies", and are used by both new and made-over hat manufacturers. Dealers in linings have "stock dies" printed in quantities and keep them on hand for sale to new and made-over hat manufacturers. In some instances a dealer will buy a job lot of linings from a manufacturer which bears the name or trade mark of a manufacturer, jobber, or retail dealer, and which for some reason, the manufacturer is unable to use. Such linings will be sold to made-over hat manufacturers by the dealer without changing in any way the name or trade mark appearing on the linings. Respondent has used such linings and sweatbands in his made-over hats, bearing the names of "Lion Hats—Langenberg Hat Co., St. Louis, Mo.—Syndicate, Pryor & Kuchar, Ennis, Tex." "Long's Mellowfelt—Long, The Custom Hatter," and "The Harold—Hats of Distinction." Langenberg Hat Co., is a jobber of hats and Pryor & Kuchar is a retailer. "Mellowfelt" is the trade name of a brand of hats sold by Long's Hat Stores, a chain of retail stores selling men's hats. "The Harold" is a trade name used by a retailer.

Respondent buys his linings from dealers in New York City as he needs them, and most of these linings are imprinted with "stock dies". Respondent does not specify any particular names to be printed on the linings, but takes whatever the dealer has on hand. There is no uniformity of name or brand used by respondent, as respondent does not sell any hats under brand names. Respondent at the time of taking testimony in this proceeding was using linings bearing the name "Quality Supreme—Finest American Make".

Leather sweatbands are purchased by respondent from dealers in such articles, and bear no names or designs when purchased. Respondent has names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which he is using at the time.

PAR. 7. Respondent sells the made-over hats manufactured by him to jobbers and wholesale dealers. There is no word of any kind on the made-over hats manufactured and sold by respondent to indicate that the hats are made-over hats, and not new hats. Some of the jobbers and wholesale dealers send out circulars in which no mention is made that the hats are made-over hats. The wholesale dealers and jobbers who buy made-over hats from respondent know that the hats are made-over hats. They come to respondent's place of business and buy the hats, and because of their familiarity with the business they know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than men's new fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondent have the appearance of new hats, and respondent endeavors to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Quality Supreme—Finest American Make", and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and

distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest-priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest-priced fur felt hat body obtainable. As against this price of new hat bodies, respondent pays from \$1 to \$2.50 per dozen for the old, worn, used, and discarded hats which he buys for use in manufacturing made-over hats.

Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

Finishing bodies:	<i>Per dozen</i>
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondent at least \$4.17 per dozen for labor costs in making his cheapest quality made-over hat; \$4.62 per dozen for his better grade; and \$4.42 per dozen for the average made-over hat which he makes. Respondent pays \$2.50 per dozen for the best grade of old hat bodies which he buys, and \$1 per dozen for the cheapest grade, which makes his highest labor and body costs for manufacturing finished made-over hats \$7.12 per dozen for the best grade, and \$5.17 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

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The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor, which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Finished men's fur felt made-over hats can be made by respondent at a cost of at least \$4.65 to \$6.60 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondent and other made-over hat manufacturers.

## MAF HAT WORKS, INC.

MAF HAT WORKS, INC. (Docket 1897.)

PARAGRAPH 1. Respondent, Maf Hat Works, is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 225 Greene Street, in the City of New York, State of New York, where for about six years last past it has been engaged in the business of manufacturing made-over men's felt hats, and of selling and distributing said hats to wholesale dealers, jobbers, and a few retail dealers, located in the various States of the United States and the District of Columbia. It was incorporated in November, 1925, with an authorized capital stock of \$50,000, of which \$20,000 has been issued. Its officers are Alex

Milder, president, and Nathan Courtmen, secretary and treasurer. Respondent causes said hats, when sold, to be transported from its aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of its business as aforesaid respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of its aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs workmen who are engaged in the various operations involved in the process of making over men's felt hats; described hereinafter. Respondent sells its made-over hats from its place of business and through a salesman who travels throughout the country. It does not send out any advertising literature. The wholesale dealers and jobbers to whom it sells do their own advertising of the hats.

Respondent sells its made-over hats in two grades, at \$8 per dozen and \$13.50 per dozen, less a discount, with a few being sold at \$15.50 per dozen. The principal difference between the grades of the hats is in the quality of trimmings used, cheaper trimmings being used in the lower-priced grade. Some of the lower-priced hats may in addition have slight imperfections in the felt. Respondent does a business of about \$100,000 annually.

PAR. 4. \* \* \* Respondent purchases its old hat bodies from dealers in New York City and from peddlers who bring the hats to it, paying an average of \$2 per dozen for them.

PAR. 6. Linings of various materials are used in practically all the men's new felt hats manufactured and sold in this country. The linings, leather sweatbands, and ribbons used by respondent on the made-over hats manufactured and sold by it are new and are bought from regular dealers in such trimmings. These dealers supply both new and made-over manufacturers. All hat linings used in new and made-over men's hats have printed on them a name or design, known in the trade as "dies". These dies are imprinted on the linings by the dealer at the order of the manufacturer. New-hat manufacturers usually order dies consisting of a trade name, trade mark, or name of the manufacturer, jobber or retail dealer, together with a design of some kind. These are known in the trade as "special dies". Many dies, however, consist of general names or terms, such as "Select Quality", "Felts De Lux", and "Aristocrat", together with a fanciful design. These are known as "stock dies", and are used by both new and made.



over hat manufacturers. Dealers in linings have "stock dies" printed in quantities and keep them on hand for sale to new and made-over hat manufacturers. In some instances a dealer will buy a job lot of linings from a manufacturer which bears the name or trade mark of a manufacturer, jobber, or retail dealer, and which for some reason, the manufacturer is unable to use. Such linings will be sold to made-over hat manufacturers by the dealer without changing in any way the name or trade mark appearing on the linings.

Respondent buys its linings from dealers in New York City as it needs them, and most of these linings are imprinted with "stock dies". Respondent does not ordinarily specify any particular names to be printed on the linings, but takes whatever the dealer has on hand. In a few cases jobbers request respondent to put their names in the made-over hats sold them by respondent in which case respondent orders linings and sweatbands imprinted with the names desired and puts them in the hats sold to those particular jobbers. There is no uniformity of name or brand used by respondent, as respondent does not sell any hats under brand names. Respondent has used linings in its made-over hats bearing the names: "Select Quality Fur Felt—Recognized Standard of Excellence." "Paramount Hats"; "Ambassador Made From Selected Furs—Hats of Character"; and at the time of taking testimony in this proceeding was using linings bearing the names "Select Quality", "Superior Quality", etc.

Leather sweatbands are purchased by respondent from dealers in such articles, and bear no names or designs when purchased. Respondent has names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which it is using at the time.

PAR. 7. Respondent sells the made-over hats manufactured by it to jobbers and wholesale dealers, and a few retail dealers, through a traveling salesman and direct. There is no word of any kind on the made-over hats manufactured and sold by respondent to indicate that the hats are made-over hats, and not new hats. The wholesale dealers and jobbers who buy made-over hats direct from respondent know that the hats are made-over hats, and the traveling salesman is instructed to inform purchasers that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondent's place of business and buy the hats, and in every case respondent advises such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than men's new fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondent that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondent have the appearance of new hats, and respondent endeavors to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate new men's fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Select Quality", "Recognized Standard of Excellence", "Superior Quality", "Made From Selected Furs"; and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding, a hat body which he could sell to the "dry shop" for \$6.50 per dozen, and this is the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondent pays an average price of \$2 per dozen for the old, worn, and discarded hats which it buys for use in manufacturing made-over hats.

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Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

	<i>Per dozen</i>
Finishing bodies:	
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimmings (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondent at least \$4.17 per dozen for labor costs in making its cheapest quality made-over hat; \$4.62 per dozen for its better grade; and \$4.42 per dozen for the average made-over hat which it makes. Respondent pays \$2 per dozen for the old hat bodies which it buys, which makes its highest total labor and body costs for manufacturing finished made-over hats \$6.62 per dozen for the best grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor, which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of new men's fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Finished men's fur felt made-over hats can be made by respondent at a cost of at least \$5.15 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondent and other made-over hat manufacturers.

MANHATTAN HAT Co., INC.

MANHATTAN HAT Co., INC. (Docket 1898.)

PARAGRAPH 1. Respondent, Manhattan Hat Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 120 Wooster Street, in the City of New York, State of New York, where for more than one year last past it has been engaged in the business of manufacturing made-over men's felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. It has an authorized capital stock of \$35,000, and its officers are Harry Samnick, president; Jacob Samnick, secretary; and Louis Reinken, treasurer. Respondent causes said hats, when sold, to be transported from its aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of its business as aforesaid respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of its aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs workmen who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondent sells its made-over hats direct to wholesale dealers and jobbers throughout the United States. It does not send out any advertising literature. The wholesale dealers and jobbers to whom it sells do their own advertising of the hats.

Respondent sells its made-over hats in two grades, at \$9 per dozen and \$12 per dozen. The principal difference between the grades of the hats is in the brim, those with taped edges selling at the lower price. Some of the lower priced hats may in addition have slight imperfections in the felt. In the years prior to 1930 respondent sold its made-over hats for considerably higher prices. In 1929 the volume of business done by respondent amounted to about \$175,000 and in 1930 it amounted to approximately \$90,000.

PAR. 4. \* \* \* Respondent purchases its old hat bodies principally from the Chelsea Old Hat Co., Chelsea, Mass., and a few from small dealers in New York City, paying \$1.25 and \$2.25 per dozen for them.

PAR. 6. \* \* \* Respondent buys its linings from dealers in New York City as it needs them, and these linings are imprinted with "stock dies". Respondent does not specify any particular names to be printed on the linings, but takes whatever the dealer has on hand. There is no uniformity of names or brand used by respondent, as respondent does not sell any hats under brand names. Respondent has used linings in its made-over hats bearing the names: "Premier Quality", "Supreme Quality—Best Make", "Quality Supreme—Finest American Make—Distinctive Styles", "The Aristocrat—Distinctive Headwear", and at the time of taking testimony in this proceeding was using linings bearing the names "Quality Supreme—Distinctive Styles" and "Premier Quality".

Leather sweatbands are purchased by respondent from dealers in such articles, and bear no names or designs when purchased. Respondent has names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which it is using at the time.

PAR. 7. Respondent sells the made-over hats manufactured by it to jobbers and wholesale dealers direct. There is no word of any kind on the made-over hats manufactured and sold by respondent to indicate that the hats are made-over hats, and not new hats. Some of the jobbers and wholesale dealers to whom respondent sells send out circulars in which no mention is made that the hats are made-over hats. The wholesale dealers and jobbers who buy made-over hats from respondent know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondent's place of business and buy the hats, and in every case respondent advises such buyers that the hats are made-over hats. Other wholesale dealers and jobbers, because of their familiarity with the business, know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than men's new felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondent that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondent have the appearance of new hats, and respondent endeavors to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Premier Quality", "Quality Supreme—Finest American Make—Distinctive Styles", and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold and distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondent pays \$1.25 and \$2.25 per dozen for the old, worn, used,

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and discarded hats which it buys for use in manufacturing made-over hats.

Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

	<i>Per dozen</i>
Finishing bodies:	
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondent at least \$4.17 per dozen for labor costs in making its cheapest quality made-over hat; \$4.82 per dozen for its better grade; and \$4.42 per dozen for the average made-over hat which it makes. Respondent pays \$2.25 per dozen for the best grade of old hat bodies which it buys, and \$1.25 per dozen for the cheapest grade, which makes its highest total labor and body costs for manufacturing finished made-over hats \$6.87 per dozen for the best grade, and \$5.42 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of new men's fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged

by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Men's finished fur felt made-over hats can be made by respondent at a cost of at least \$4.90 to \$6.35 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondent and other made-over hat manufacturers.

#### PRIME HAT CO.

LOUIS OPPENHEIM and V. GERBINO, copartners, doing business under the trade name and style of Prime Hat Co. (Docket 1899.)

PARAGRAPH 1. Respondents Louis Oppenheim and V. Gerbino are copartners, doing business under the trade name and style of Prime Hat Co., and have their place of business at 103-105 Mott Street, in the City of New York, State of New York, where for about eight years last past they have been engaged in the business of manufacturing made-over men's felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. Respondents cause said hats, when sold, to be transported from their aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of their business as aforesaid respondents are in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of their aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondents employ an average of 12 employees in their place of business, who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondents sell their hats to wholesale dealers and jobbers direct.



They do not send out any advertising literature to customers and prospective customers. The wholesale dealers and jobbers to whom they sell do their own advertising of the hats.

Respondents sell their made-over hats for \$6.75, \$8.50, and \$9 per dozen depending on the quality of the hats. The principal difference between the grades of the hats is in the quality of the felt and general appearance of the hats. Some of the lower priced hats may in addition have slight imperfections in the felt. In the years prior to 1930 respondents sold their made-over hats for considerably higher prices. The average volume of business done by respondents is \$20,000 per year.

PAR. 4. \* \* \* Respondents purchase their old hat bodies from dealers in New York City, paying from \$1.80 to \$2.15 per dozen for them, and sometimes even less.

PAR. 6. \* \* \* Respondents buy their linings from dealers in New York City as they need them, and these linings are imprinted with "stock dies". Respondents do not specify any particular names to be printed on the linings, but take whatever the dealer has on hand. There is no uniformity of name or brand used by respondents, as respondents do not sell any hats under brand names. Respondents have used linings in their made-over hats bearing the names: "The Aristocrat—Distinctive Headwear" and "Felts De Lux—Standard of Excellence—Custom Made—Mark of Quality"; and at the time of taking testimony in this proceeding were using similar linings.

Leather sweatbands are purchased by respondents from dealers in such articles, and bear no names or designs when purchased. Respondents have names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which they are using at the time.

PAR. 7. Respondents sell the made-over hats manufactured by them to jobbers and wholesale dealers. There is no word of any kind on the made-over hats manufactured and sold by respondents to indicate that the hats are made-over hats, and not new hats. Some of the jobbers and wholesale dealers to whom respondents sell, send out circulars in which no mention is made that the hats are made-over hats. The wholesale dealers and jobbers who buy made-over hats from respondents know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondents' place of business and buy the hats, and in every case respondents advise such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that

the hats are made-over hats because of the prices at which they are sold, said prices being lower than new men's fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondents that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondents have the appearance of new hats, and respondents endeavor to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondents so nearly simulate new men's fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Felts De Lux—Standard of Excellence—Custom Made—Mark of Quality", "The Aristocrat—Distinctive Headwear", and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondents can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the

"dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondents pay from \$1.80 to \$2.15 per dozen for the old, worn, used, and discarded hats which they buy for use in manufacturing made-over hats.

Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

	<i>Per dozen</i>
Finishing bodies:	
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondents at least \$4.17 per dozen for labor costs in making their cheapest quality made-over hat; \$4.62 per dozen for their better grade; and \$4.42 per dozen for the average made-over hat which they make. Respondents pay \$2.15 per dozen for the best grade of old hat bodies which they buy, and \$1.80 per dozen for the cheapest grade, which makes their highest total labor and body costs for manufacturing finished made-over hats \$6.77 per dozen for the best grade, and \$5.97 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor, which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at

which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over hat manufacturers any more than they do new hat manufacturers.

Finished men's fur felt made-over hats can be made by respondents at a cost of at least \$5 to \$5.80 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondents and other made-over hat manufacturers.

#### PROSPECT HAT Co., INC.

##### PROSPECT HAT Co., INC. (Docket 1902.)

PARAGRAPH 1. Respondent, Prospect Hat Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 20 West Third Street, in the City of New York, State of New York, where for about three years last past it has been engaged in the business of manufacturing men's made-over felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. It was incorporated in February, 1928, and its officers are Nathan Kott, president; F. Maisel, treasurer; and Carl Goldberg, secretary. Respondent causes said hats, when sold, to be transported from its aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of its business as aforesaid respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of its aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs workmen who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondent sells its made-over hats through a commission house in New York City to wholesale dealers and jobbers. It does not send out any advertising literature. The wholesale dealers and jobbers to whom it sells do their own advertising of the hats.

Respondent sells its made-over hats in two grades, at \$7 per dozen and \$12 per dozen. The principal difference between the grades of the hats is in the appearance and quality of the felt body. Some of the lower priced hats may in addition have slight imperfections in the felt. Respondent did between \$45,000 and \$50,000 worth of business in the years 1928 and 1929, and about \$65,000 worth of business in the year 1930.

PAR. 4. \* \* \* Respondent purchases its old hat bodies from dealers in New York City, and from peddlers who bring the hats to it, paying \$1.75, \$2.25, and \$2.50 per dozen for them.

PAR. 6. \* \* \* Respondent buys its linings from dealers in New York City as it needs them, and most of these linings are imprinted with "stock dies". Respondent does not ordinarily specify any particular names to be printed on the linings, but takes whatever the dealer has on hand. In a few cases jobbers request respondent to put their names in the made-over hats sold them by respondent, in which case respondent orders linings and sweatbands imprinted with the names desired and puts them in the hats sold to those particular jobbers. There is no uniformity of name or brand used by respondent, as respondent does not sell any hats under brand names. Respondent has used linings in its made-over hats bearing the names: "Felts De Lux—Custom Made—Mark of Quality"; and "Style and Quality"; and at the time of taking testimony in this proceeding was using linings bearing the name "Sportsman's".

Leather sweatbands are purchased by respondent from dealers in such articles, and bear no name or design when purchased. Respondent has names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which it is using at the time.

PAR. 7. Respondent sells the made-over hats manufactured by it to jobbers and wholesale dealers through a commission house. There is no word of any kind on the made-over hats manufactured and sold by respondent to indicate that the hats are made-over hats, and not new hats. The wholesale dealers and jobbers who buy made-over hats from respondent know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondent's

place of business and buy the hats, and in every case respondent advises such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than men's new fur felt hats can be sold for. In invoicing made-over hats to purchasers no mention is made by respondent that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondent have the appearance of new hats, and respondent endeavors to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Felts De Lux—Custom Made—Mark of Quality", "Style and Quality", and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of

testimony in this proceeding, a hat body which he could sell to the "dry shop" for \$6.50 per dozen, and this is the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondent pays from \$1.75 to \$2.50 for the old, worn, and discarded hats which he buys for use in manufacturing made-over hats.

Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

Finishing bodies:	<i>Per dozen</i>
Cheap hats.....	\$1.75
Better hats.....	2.20
Average hats.....	2.00
Specials (negligible in quantity).....	2.65
Trimming (flat rate).....	.95
Sewing on leathers (flat rate).....	.20
Flanging (flat rate).....	.45
Steaming (flat rate).....	.25
Slicking and packing (flat rate).....	.35
Dry cleaning.....	.22

Applying these figures, it therefore costs respondent at least \$4.17 per dozen for labor costs in making its cheapest quality made-over hat; \$4.62 per dozen for its better grade; and \$4.42 per dozen for the average made-over hat which it makes. Respondent pays \$2.50 per dozen for the best grade of old hat bodies which it buys, and \$1.75 per dozen for the cheapest grade, which makes its highest total labor and body costs for manufacturing finished made-over hats \$7.12 per dozen for the best grade, and \$5.92 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2.80
Trimmings.....	1.32
Flanging.....	.55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor, which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufac-

turers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Men's finished fur felt made-over hats can be made by respondent at a cost of at least \$4.65 to \$5.75 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondent and other made-over hat manufacturers.

#### H. & H. HAT MANUFACTURING CO.

HYMAN SOMER, an individual, doing business under the trade name and style of H. & H. Hat Manufacturing Co. (Docket 1903.)

PARAGRAPH 1. Respondent, Hyman Somer, is an individual doing business under the trade name and style of H. & H. Hat Manufacturing Co., and has his place of business at 16 West Fourth Street, in the City of New York, State of New York, where for about five years last past he has been engaged in the business of manufacturing made-over men's felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. Respondent causes said hats, when sold, to be transported from his aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of his business as aforesaid respondent is in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of new and made-over men's felt hats.

PAR. 2. In the course and conduct of his aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs from 15 to 18 employees in his place of business who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondent sells



his made-over hats direct to wholesale dealers and jobbers throughout the United States. He does not send out any advertising literature. The wholesale dealers and jobbers to whom he sells do their own advertising of the hats.

Respondent sells his made-over hats in two grades, at \$6 per dozen and \$9 per dozen, less 10 percent discount, a few being sold at \$12 per dozen. The principal difference between the grades of the hats is in the quality of the bodies and trimmings. Some of the lower priced hats may in addition have slight imperfections in the felt. Respondent's business amounts to about \$70,000 per year.

PAR. 4. \* \* \* Respondent purchases his old hat bodies from dealers and peddlers in New York City, paying from \$1.25 to \$2.75 per dozen for them.

PAR. 6. \* \* \* Respondent buys his linings from dealers in New York City as he needs them, and these linings are imprinted with "stock dies". Respondent does not specify any particular names to be printed on the linings, but takes whatever the dealer has on hand. There is no uniformity of name or brand used by respondent, as respondent does not sell any hats under brand names. Respondent has used linings in his made-over hats bearing the names: "Superior Quality—High Grade—Hats of Distinction"; "Quality Supreme—Styles Distinctive—For Fine Trade"; and at the time of taking testimony in this proceeding was using linings bearing the names: "Distinctive Styles—Styles of Distinction."

Leather sweatbands are purchased by respondent from dealers in such articles, and bear no names or designs when purchased. Respondent has names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which he is using at the time.

PAR. 7. Respondent sells the made-over hats manufactured by him to jobbers and wholesale dealers direct. There is no word of any kind on the made-over hats manufactured and sold by respondent to indicate that the hats are made-over hats, and not new hats. Some of the jobbers and wholesale dealers to whom respondent sells send out circulars in which no mention is made that the hats are made-over hats. The wholesale dealers and jobbers who buy made-over hats from respondent know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondent's place of business and buy the hats, and in every case respondent advises such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than men's new fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondent that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondent have the appearance of new hats, and respondent endeavors to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Superior Quality—Hats of Distinction"; "Quality Supreme—Styles Distinctive—For Fine Trade"; and other similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of men's made-over fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondent pays from \$1.25 to \$2.75 for the old, worn, used, and discarded hats which he buys for use in manufacturing made-over hats.

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## Memoranda

Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

	<i>Per dozen</i>
Finishing bodies:	
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondent at least \$4.17 per dozen for labor costs in making his cheapest quality made-over hat; \$4.62 per dozen for his better grade; and \$4.42 per dozen for the average made-over hat which he makes. Respondent pays \$2.75 per dozen for the best grade of old hat bodies which he buys, and \$1.25 per dozen for the cheapest grade, which makes his highest total labor and body costs for manufacturing finished made-over hats \$7.37 per dozen for the best grade, and \$5.42 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up.

Ribbons, linings, and leather sweatbands do not cost made-over hat manufacturers any more than they do new hat manufacturers.

Men's finished fur felt made-over hats can be made by respondent at a cost of at least \$4.40 to \$6.35 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondent and other made-over hat manufacturers.

#### HERMAN HAT Co.

HERMAN DANIEL and MURRAY DANIEL, copartners, doing business under the trade name and style of Herman Hat Co. (Docket 1904.)

PARAGRAPH 1. Respondents Herman Daniel and Murray Daniel are copartners doing business under the trade name and style of Herman Hat Co., and have their place of business at 323 Henry Street, in the City of New York, State of New York, where for about five years last past they have been engaged in the business of manufacturing men's made-over felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. At the time of taking testimony in this proceeding Murray Daniel was no longer a partner in the business having severed his connection with the firm, and Charles Daniel, father of respondent Herman Daniel, had become a partner. Respondents cause said hats, when sold, to be transported from their aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location, in the several States of the United States and the District of Columbia.

In the course and conduct of their business as aforesaid respondents are in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of men's new and made-over felt hats.

PAR. 2. In the course and conduct of their aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondents employ from 6 to 8 employees in their place of business, who are engaged in the various operations involved in the process

of making over men's felt hats, described hereinafter. Respondents sell their hats to wholesale dealers and jobbers direct and through commission houses, the latter comprising about 75 percent of the total sales. They do not at present send out any advertising literature to customers and prospective customers, but formerly they did. The wholesale dealers and jobbers to whom they sell do their own advertising of the hats.

Respondents sell their made-over hats in two grades, at \$9 per dozen and \$10.50 per dozen less 10 percent discount. The principal difference between the grades of the hats is in the quality of the bodies and trimmings. Some of the lower priced hats may in addition have slight imperfections in the felt. In the years prior to 1930 respondents sold their made-over hats for considerably higher prices. In 1929 the volume of business done by respondents amounted to between \$40,000 and \$50,000, but in 1930 it amounted to approximately \$25,000.

PAR. 4. \* \* \* Respondents purchase their old hat bodies from dealers in New York City, paying from 75 cents to \$1.25 per dozen for them.

PAR. 6. \* \* \* Respondents buy their linings from dealers in New York City as they need them, and these linings are imprinted with "stock dies". Respondents do not specify any particular names to be printed on the linings, but take whatever the dealer has on hand. There is no uniformity of name or brand used by respondents as respondents do not sell any hats under brand names. Respondents have used linings in their made-over hats bearing the names: "Superior Quality—Distinctive Styles—Made by Expert Craftsmen for Fine Trade"; "Felts De Lux—Custom Made—Mark of Quality"; and at the time of taking testimony in this proceeding were using similar linings.

Leather sweatbands are purchased by respondents from dealers in such articles, and bear no names or designs when purchased. Respondents do not imprint names and designs on the sweatbands but use only plain sweatbands in their made-over hats.

PAR. 7. Respondents sell the made-over hats manufactured by them to jobbers and wholesale dealers, through commission houses and direct. There is no word of any kind on the made-over hats manufactured and sold by respondents to indicate that the hats are made-over hats, and not new hats. Some of the jobbers and wholesale dealers to whom respondents sell send out circulars in which no mention is made that the hats are made-over hats. The wholesale dealers and jobbers who buy made-over hats direct from respondents, and the commission houses through whom respondents sell know that the hats are made-over hats. Many buyers for

wholesale dealers and jobbers come to respondents' place of business and buy the hats, and in every case respondents advise such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold, said prices being lower than men's new fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondents that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondents have the appearance of new hats, and respondents endeavor to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats. \* \* \*

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondents so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats, and bearing words such as "Superior Quality—Made by Expert Craftsmen for Fine Trade"; "Felts De Lux—Custom Made—Mark of Quality", and similar phrases is deceptive and leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the minds of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondents can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending

upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondents pay from 75 cents to \$1.25 per dozen for the old, worn, used, and discarded hats which they buy for use in manufacturing made-over hats.

Five made-over hat manufacturers employ union labor in their factories, but the great majority do not. The made-over hat manufacturers employing union labor pay the following wages in their factories for making over hats:

Finishing bodies:	<i>Per dozen</i>
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondents at least \$4.17 per dozen for labor costs in making their cheapest quality made-over hat; \$4.62 per dozen for their better grade; and \$4.42 per dozen for the average made-over hat which they make. Respondents pay \$1.25 per dozen for the best grade of old hat bodies which they buy, and 75 cents per dozen for the cheapest grade, which makes their highest total labor and body costs for manufacturing finished made-over hats \$5.87 per dozen for the best grade, and \$4.92 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor, which are no higher, if as high, as paid by new hat manufacturers, the total labor costs for manufac-

turing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over hat manufacturers any more than they do new hat manufacturers.

Men's finished fur felt made-over hats can be made by respondents at a cost of at least \$5.90 to \$6.85 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondents and other made-over hat manufacturers.



## Syllabus

## IN THE MATTER OF

## MORRIS HOCHBERG AND DAVID HOCHBERG, COPARTNERS, TRADING UNDER THE FIRM NAME AND STYLE OF GRAND HAT COMPANY

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

*Docket 1901. Complaint, Jan. 20, 1931—Decision, June 17, 1933*

Where a firm engaged in the purchase of used and discarded men's felt hats, and in the cleaning, renovation, and re-equipment thereof, with new hat ribbons, sweatbands, and linings, with typical designs and words or legends thereon, under a process and treatment which gave said hats the appearance of new,

(a) Sold the same with nothing thereon to advise the uninformed as to their made-over character, through wholesale dealers and agents, whose retail dealer customers (1) included such establishments as customarily deal in new hats and/or other merchandise, (2) made no particular, if any, revealing, distinction in their display and sale of the new, as compared with the cheaper, less durable, and inferior renovated, article, and (3) offered and sold the latter to the ultimate consumer making the customary demand for a "hat", in ignorance of the comparatively new and rapidly growing business in hats renovated as above set forth, and their marketing through retail channels theretofore associated in the public mind with sale of new hats exclusively, without, ordinarily, advising him as to the true nature of the article being sold him;

With the result that wholesale and retail dealers were enabled to sell said hats as and for new, and the ultimate purchaser or consumer was deceived and misled into buying as and for a new and unused hat, one discarded and renovated, as above set forth, notwithstanding the prejudice or distaste frequently or customarily felt for such a purchase, and trade was diverted from wholesale and retail dealers and manufacturers of, the necessarily more costly new felt and wool hats and from the "dry shop" hat body manufacturers or finishers, who were variously unable to meet the competition of the renovated article misleadingly sold as above set forth, and whose business was seriously injured or destroyed thereby, to their prejudice and injury, and that of the industry and purchasing public; and

(b) Sold some of the higher priced renovated hats, dealt in by it as aforesaid, with the mark and label of a long established and well known manufacturer of men's hats of high quality, which had become well and favorably known to the public throughout the United States, and represented said hats as having been originally made by said manufacturer, notwithstanding the fact that hats so marked, labeled, and represented had not been made by the manufacturer in question;

With the effect of inducing wholesale dealers and jobbers and the purchasing public to buy said hats as and for new hats made by said manufacturer, and pay a higher price therefor, because of the well known qualities of said manufacturer's product, and with the capacity and tendency so to induce such

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purchase at higher prices, and with the further effect of injuring the business of said manufacturer, through diverting to said firm from such manufacturer sales of men's new felt hats, and with capacity and tendency so to divert:

*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. G. Ed. Rowland* for the Commission.

*Mr. Samuel L. Miller*, of New York City, for respondents.

*Mr. John Knight Holbrook, Jr.*, of New York City, for Hat Institute, Inc. (*Amicus Curiae*).

## COMPLAINT

Acting in the public interest pursuant to the provision 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 Morris Hochberg and David Hochberg, copartners, trading under the firm name and style of Grand Hat Co., hereinafter referred to as respondents, have been and now 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, Morris Hochberg and David Hochberg, are copartners, trading under the firm name and style of Grand Hat Co., having their office and place of business at 4-6 Montgomery Street, in the City of New York, State of New York, and have been for more than one year last past engaged in the business of selling and distributing men's felt hats of the character and in the manner hereinafter mentioned to jobbers and wholesale dealers located at points in the various States of the United States and the District of Columbia. Respondents cause said hats when so sold to be transported from the said City of New York, State of New York, through and into other States of the United States and the District of Columbia, to the said jobbers and wholesale dealers thereof at their respective points of location. In the course and conduct of their said business as aforesaid, respondents are in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of men's felt hats in interstate commerce among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business respondents buy second-hand, old, used, and discarded men's felt hats which hats are in some instances sold by respondents to jobbers and wholesale dealers in the same condition they were in when bought, and in other cases are renovated and sold by respondents to said jobbers and wholesale dealers. All hats which are renovated by

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respondents are first sent to a dry-cleaning establishment, where they are thoroughly dry-cleaned and returned to respondents. Said hats are then steamed, ironed, and shaped by respondents at their place of business. The poorer grade of hats are sold by respondents to their customers without being further treated. The higher quality hats are relined and fitted with new ribbon bands, sweatbands, and size labels, and then sold by respondents to jobbers and wholesale dealers, who resell them to retail dealers. Said new relinings and sweatbands are purchased by respondents from the manufacturers thereof, and bear various trade names, designs, devices, and descriptive wording.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondents, and fitted with new trimmings, as described in paragraph 2 herein, have the appearance of new hats which have never been worn, and said hats are sold by respondents to jobbers and wholesale dealers without anything on or about said hats to indicate that such hats are in fact second-hand hats which have been renovated and made over by said respondents. Said hats are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said hats have been previously worn, and then renovated and made over, and under such circumstances as to indicate that they are new hats.

The cost to respondents of obtaining, renovating, and making over said hats as aforesaid is much less than the cost to hat manufacturers of manufacturing new hats of similar quality, and respondents are thereby able to sell said hats to jobbers and wholesalers at substantially lower prices than manufacturers of hats can sell hats of the same or similar quality to jobbers and wholesale dealers.

PAR. 4. It is the common belief and understanding among wholesale and retail dealers, and the purchasing public, that hats having the appearance of new and unused hats, as do hats distributed by respondents, and sold by respondents and those dealing in men's hats without anything on or about said hats to indicate that such is not so, are in fact hats which are new and unused, and have never been worn or used by anyone previously; and said wholesale and retail dealers, and the purchasing public, when buying hats having the appearance of new and unused hats, and without anything on or about said hats to the contrary, are entitled to receive new and unused hats, and not second-hand, old, used, and discarded hats which have been renovated and made over. The acts and practices of respondents as hereinabove set forth are calculated to, and do, have the capacity and tendency of inducing many wholesale and retail dealers, and many of the purchasing public, to purchase the said second-hand, old, used, and discarded hats which have been renovated and made over by respondents,

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in the mistaken belief that they are purchasing new and unused hats, and tends to and does unfairly divert trade to respondents from concerns engaged in the manufacture and sale of hats in interstate commerce throughout the various States of the United States and the District of Columbia.

PAR. 5. John B. Stetson Co., of Philadelphia, Pa., is a large and well-known manufacturer of men's hats. The hats manufactured and sold by said company are of a high quality, and have become well and favorably known to the public throughout the United States. Among the second-hand, used, old, and discarded hats which are renovated and made over by respondents as hereinabove set forth, there are some hats manufactured by said John B. Stetson Co., and hats of similar quality manufactured by other hat manufacturers in this country and foreign countries. In offering for sale and selling their said renovated and made-over hats, respondents separate some of the hats made by said John B. Stetson Co. and said other manufacturers of high quality hats, and offer them for sale and sell them as hats manufactured by John B. Stetson Co. For hats so described respondents charge a higher price than for their regular renovated and made-over hats. Such hats described by respondents as John B. Stetson hats are not in all cases hats manufactured by said John B. Stetson Co., but include many hats made by manufacturers other than John B. Stetson Co.; and the fact is that respondents cannot tell and do not know which hats sold by them were originally manufactured by John B. Stetson Co., or any other manufacturer. The sale by respondents of hats described as hats manufactured by John B. Stetson Co., which hats were not in fact manufactured by John B. Stetson Co., is unfair to said John B. Stetson Co., and to wholesale and retail dealers and the purchasing public, who are induced to buy said hats, and pay a higher price therefor, because of the well-known quality of said John B. Stetson Co. hats, and relying on respondent's representations that said hats are hats which were originally manufactured by said John B. Stetson Co. The sale of said hats as and for hats manufactured by John B. Stetson Co. tends to, and does, divert trade to respondents from said John B. Stetson Co., to the injury and detriment of said company.

PAR. 6. The above alleged acts and practices of respondents are each and all of them to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning 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."

## 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 its 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 appearance, and having filed their answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and counsel for respondents, and brief *amicus curiae* and oral argument by counsel for The Hat Institute, Inc., the trade association for the hat industry, in support of the complaint, 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 Morris Hochberg and David Hochberg are copartners doing business under the trade name and style of Grand Hat Co. and have their place of business at 264 Dawson Street, in the City of New York, State of New York, where for about three years last past they have been engaged in the business of manufacturing men's made-over felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. Respondents cause said hats, when sold, to be transported from their aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of their business as aforesaid respondents are in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of men's new and made-over felt hats.

PAR. 2. In the course and conduct of their aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondents employ workmen in their place of business who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondents sell their made-over hats direct to wholesale dealers and jobbers throughout the

United States. They do not send out any advertising literature. The wholesale dealers and jobbers to whom respondents sell do their own advertising of the hats.

Respondents sell their made-over hats in two grades, at \$9 per dozen and \$12.50 per dozen, less 10 percent discount, with a few being sold at \$13.50 per dozen. The principal difference between the grades of the hats is in the quality of the bodies and trimmings. Some of the lower priced hats may in addition have slight imperfections in the felt. In the years prior to 1930 respondents sold their made-over hats at from \$18.50 to \$21.50 per dozen. The volume of business done by respondents in made-over hats amounts to between \$155,000 and \$160,000 per year.

Respondents also do a large business in buying out-of-style new hats from retail stores and reselling them. Sometimes they are remodeled and sometimes sold as they are. The better grades of these hats are separated from the others and sold under their own names for higher prices. Respondents also reclean and reblock some of the old, worn, used, and discarded hats which they buy, and sell them at cheap prices. These hats are not retrimmed or remade. In addition, for the past fifteen months respondents have been operating a "dry shop", making about 50 dozen new hats per week, which they sell for \$18.50 to \$21.50 per dozen.

PAR. 3. The principal material used in the manufacture of men's hats sold in this country is felt, which is made from the fur of animals. There are a comparatively small number of men's hats manufactured from wool, but these hats are inferior in quality to fur felt hats, and cheaper in price. The principal fur used in the manufacture of the felt is rabbit, or cony fur, although beaver fur and nutria are also used to a considerable extent, beaver being almost exclusively used in the highest priced men's felt hats. The rabbit or cony fur is obtained from England, Australia, France, Poland, and other European countries. The darker colored felt hat bodies are made from British or Australian rabbit fur, while the lighter colored bodies are made from cony, or white rabbit, fur secured principally from France. Many new hat manufacturers purchase the fur from fur cutters, who clip it from the pelt, pack it, and sell it to the hat manufacturer. Some of the larger manufacturers, such as the Frank H. Lee Co., of Danbury, Conn., and John B. Stetson Co., of Philadelphia, Pa., buy the pelts and clip their own fur.

The pelts are seasoned for a certain length of time, and then the fur is clipped from them by machines, cleaned, and the hair separated from the fur. In manufacturing a man's new felt hat a certain amount of fur is selected by weight. Usually several different kinds of fur are used in a hat, depending on the color, weight, or other

characteristics of the finished hat. Each manufacturer has his own formulae of mixtures used in the hats manufactured by him. The fur selected is blown by a machine into a chamber in which there is a truncated perforated cone, and the fur drops on this cone and is uniformly distributed over it. In its first stage the hat is cone-shaped and about  $3\frac{1}{2}$  feet high. After its removal from the cone it is dipped in hot water and shrunk by various manipulations by skilled workmen while saturated with hot water, put on a smaller cone, and the same process repeated until finally the hat is the desired size for shaping into a finished hat. It is then put on a blocking form and given its first shaping. Various other shaping operations follow, and the hat is dyed when necessary. It is then ready for the final operations of pouncing, ironing, luring, trimming, and flanging. Pouncing consists of rubbing off the rough hairs on the body of the hat, and luring is the process of smoothing the hat with a cloth, and is the final process before trimming. Trimming consists in sewing silk bands on the outside of the hat, and leather sweatbands and linings on the inside. Flanging is the process of giving permanent shape to the brim of the hat, and is usually done after the hats have been trimmed. All of the operations described above are performed by highly skilled workmen.

Many manufacturers of men's felt hats in this country do not make the hat bodies, but buy them from manufacturers of such bodies and do the finishing in their own plants. These manufacturers are known in the trade as "dry shops."

PAR. 4. Men's made-over felt hats have been manufactured and sold in the United States for more than twenty years, but it has only been during the past six or seven years that their sale has had any substantial effect on the hat industry as a whole. Prior to that time the made-over hats were principally sold in the second-hand stores, and many of them were exported to foreign countries. It was not until an improved method of cleaning the old hat bodies was perfected that it has been possible to remake and refinish the old hats so that they are an important factor in competition with new hats.

The first step in the manufacture of men's made-over felt hats is the purchase of the old, worn, used, and discarded hat bodies. There are regular dealers in such old hats located in Chelsea, Mass., New York City, and other cities. The largest dealers in men's old, worn, used, and discarded felt hats are located in Chelsea, Mass., which city seems to be the principal source of supply of such hats. These dealers in old hats buy them from many sources, including trashmen, junk dealers, peddlers, second-hand clothing collectors, and retail stores. The hats purchased from retail stores are usually hats which have been left in the stores by men who have purchased new hats.

In some few instances out-of-style hats which have never been worn are purchased from retail stores, but these hats are generally sold without being made over.

The old, worn, used, and discarded men's felt hats purchased by the dealers as aforesaid are sorted by them according to color, quality, and condition, and are packed in bales and sold to made-over hat manufacturers, such as respondents. Respondents purchase their old hat bodies from various dealers in old hats, paying from \$1.50 to \$2.75 per dozen for them.

PAR. 5. The old, worn, used, and discarded men's felt hats are received by respondents packed in bales. Respondents strip all trimmings from the hats and send them to a dry-cleaning establishment in Brooklyn, N.Y., where they are put through a vacuum cleaning process. The hats are put in a vacuum cleaning machine and the vacuum turned on. Then 500 gallons of benzine are put in and the machine started revolving. The benzine circulates all around the hats, and in the course of about 10 minutes runs out of the machine, leaving the hats thoroughly cleaned. The hats remain in the machine altogether about three quarters of an hour, under vacuum. The machine operates slowly because it softens the felt in the hats if it revolves rapidly, or if the hats are left in the benzine too long.

When the cleaned hats are returned respondents turn them inside out. The brims are stiffened with shellac and the crowns are stiffened with gum tragacanth. They are then blocked by steam and put on an electric ironing machine for the shaping of the crown. The hats are then taken to the finishers for pouncing, which consists in smoothing the rough hairs of the body of the hat. Powder is then put on the hats with a wet brush and rubbed in so as to give the hats a uniform color. They are then sent to the trimmers, who sew new hatbands, sweat leathers, and linings on the hats. The hats are then flanged, which consists in shaping the hats to conform to the style which the manufacturer desires to make. The last process is that of luring, in which the whole hat is smoothed with a piece of cloth. The hats are then packed in boxes for shipment to customers.

Some of the old hats bought by respondents are in too bad a condition to justify putting through the above process, in which case they are merely cleaned and sold at a cheaper price than those that are made over.

PAR. 6. Linings of various materials are used in practically all the men's new felt hats manufactured and sold in this country. The linings, leather sweatbands, and ribbons used by respondents on the made-over hats manufactured and sold by them are new, and are bought from regular dealers in such trimmings. These dealers sup-



ply both new and made-over hat manufacturers. All hat linings used in new and made-over men's hats have printed on them a name or design known in the trade as "dies." These dies are imprinted on the linings by the dealer at the order of the manufacturer. New hat manufacturers usually order dies consisting of a trade name, trade mark, or name of the manufacturer, jobber or retail dealer, together with a design of some kind. These are known in the trade as "special dies". Many dies, however, consist of general names or terms, such as "Select Quality", "Felts De Lux", and "Aristocrat", together with a fanciful design. These are known as "stock dies" and are used by both new and made-over hat manufacturers. Dealers in linings have "stock dies" printed in quantities and keep them on hand for sale to new and made-over hat manufacturers. In some instances a dealer will buy a job lot of linings from a manufacturer which bears the name or trade mark of a manufacturer, jobber, or retail dealer, and which for some reason the manufacturer is unable to use. Such linings will be sold to made-over hat manufacturers by the dealer without changing in any way the name or trade mark appearing on the linings.

Respondents buy their linings from dealers in New York City as they need them, and these linings are imprinted with "stock dies." Respondents do not specify any particular names to be printed on the linings, but take whatever the dealer has on hand. There is no uniformity of name or brand used by respondents, as respondents do not sell any hats under brand names. Respondents have used linings in their made-over hats bearing the names: "Sportsmen Hats—Styles Distinctive—Chapeaux-De-Elite"; "Quality Superb"; "Select Quality—Fur Felt—Recognized Standard of Excellence"; and at the time of taking testimony in this proceeding was using linings bearing the names; "Superior Quality—Distinctive Styles—Made by Expert Craftsmen for Fine Trade"; "The Metropolitan Standard"; "Select Quality—Recognized Standard of Excellence"; and others.

Leather sweatbands are purchased by respondents from dealers in such articles, and bear no names or designs when purchased. Respondents have names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which they are using at the time.

PAR. 7. Respondents sell the made-over hats manufactured by them to jobbers and wholesale dealers direct. There is no word of any kind on the made-over hats manufactured and sold by respondents to indicate that the hats are made-over hats and not new hats. Some of the jobbers and wholesale dealers to whom respondents sell send out circulars in which no mention is made that the hats are

made-over hats. The wholesale dealers and jobbers who buy made-over hats direct from respondents know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondents' place of business and buy the hats, and in every case respondents advise such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold; said prices being lower than new men's fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondents that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondents have the appearance of new hats, and respondents endeavor to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats.

A number of made-over hats manufactured by respondents, together with a number of made-over hats manufactured by another made-over hat manufacturer, were introduced in evidence and marked as exhibits in this proceeding. A new hat manufactured by a new hat manufacturer was also introduced in evidence and marked as an exhibit. All these hats were then mingled and handed to a number of witnesses from different branches of the hat trade with the request that they designate which hats were new and which were made over. The witnesses asked to make this test consisted of the president of one of the largest companies manufacturing men's felt hats in the United States—a man with 46 years' experience in the hat business—and who has personally worked in all the various processes of manufacture of men's felt hats; three managers of hat stores, and one wholesale hat dealer, who has been in the business since 1892.

Not one of these witnesses was able to correctly distinguish between all of the new and made-over hats, even after thorough and careful examination. Nine hats, eight being made-over hats and one a new hat, were examined by the hat manufacturer, and five hats, four being made-overs and one new, were examined by the other witnesses. All of the witnesses identified some of the hats correctly, but none of them designated all of them properly. The new hat manufacturer designated the new hat as a made-over hat, and picked two of the made-over hats as being new hats. One of the retail hat store managers and the wholesale hat dealer picked all of the hats as being made-over hats. Another retail hat store manager desig-

nated three of the hats, including the new hat, as being new hats, and two of the hats as made-over hats. The other retail hat store manager picked four of the hats, including the new hat, as being made-over hats, and one made-over hat as being a new hat.

PAR. 9. It is the invariable custom of men when buying a hat, either in a store selling hats exclusively or in a store selling hats and other articles of merchandise, to ask for a "hat", and never ask for a "new hat." Witnesses connected with four well-known chain store organizations selling men's hats in New York City and in other cities of the United States, and the buyer of men's and women's hats for a chain department store organization operating 1,472 stores in cities and towns in all parts of the United States, testified in this proceeding. These stores sold men's new fur felt hats at varying prices, the lowest being \$1.98 and the average being about \$3. Not one of these witnesses knew of a case where a man purchasing a hat in any of their stores had asked for a "new hat." They simply asked for a "hat."

Twelve representative men, selected at random and not advised in advance as to the nature of the proceeding or the questions to be asked them, were called as witnesses in this case. They included security and advertising salesmen, an accountant, business men, a private detective, instructors, and law clerks. They all testified that they never asked for a "new hat" when making a purchase of a hat, but always asked for a "hat", and that they expected to receive a new hat, and would feel that they had been deceived if the dealer sold them a made-over hat without advising them that the hat was made over. They testified that they had a prejudice against wearing a hat which had been previously worn by someone else and discarded, even though it had been thoroughly cleaned and fitted with new trimmings.

Not one of these men knew that there was such a business as the made-over hat business, or that men's old, worn, used, and discarded hats were made over and resold to the public in stores which handled men's hats.

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats and bearing words such as "Quality Superb"; "Superior Quality—Distinctive Styles—Made by Expert Craftsmen for Fine Trade"; "Select Quality—Recognized Standard of Excellence"; and other similar phrases is deceptive and

leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the mind of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondents can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 11. Wholesale dealers and jobbers know that the hats they buy from respondents are made-over hats. Such dealers handle new hats as well as made-over hats, and from their familiarity with the hat business they are able to tell from the prices at which they buy hats those which are made over and those which are new, even if the made-over hat manufacturer does not advise them that the hats are made over. In selling made-over hats to retail dealers the jobbers and wholesale dealers do not always advise said retail dealers that the hats are not new hats, but are made over. Wholesale dealers and jobbers sell made-over hats by advertising circulars and catalogs sent to retail dealers and by traveling salesmen. The salesmen carry samples of made-over hats to show to retail dealers. Some of the wholesale dealers and jobbers sew tickets in the sample made-over hats bearing the words "made over", or some other word indicating that the hats are not new, and others rely on their salesmen to advise the retail dealers that the hats are made-over hats. In many instances the salesmen do not advise the retail dealers that the hats are made-over hats.

Many wholesale dealers and jobbers of made-over hats offer such hats for sale in advertising circulars or catalogs which are distributed to retail dealers. Such hats are sometimes offered for sale in said circulars or catalogs by themselves, and sometimes together with new hats and hats which have not been worn by anybody, but which are out-of-date because of style or color. Some wholesale dealers and jobbers indicate that the hats are made-over hats, in said circulars or catalogs by use of the words "renovated" or "made over", but many of them do not indicate by any word or words, or other description, that the hats being offered for sale are old, worn, used, and discarded men's felt hats which have been made over.

Many wholesale dealers and jobbers engaged in the sale of made-over hats to retail dealers do not indicate in any way on their invoices

that the hats being sold are made-over hats, and some retail dealers have bought made-over hats from such wholesale dealers and jobbers without knowing that the said hats were not new hats.

PAR. 12. Made-over hats are sold generally throughout the United States, but the principal sale is probably in the Southern States. Testimony of retail dealers, including small general stores, men's furnishing stores, and a few department stores, located in a number of cities and small towns in a number of Southern States, was taken in this proceeding. Witnesses were called by both sides.

Made-over hats sold in retail stores vary in price from 95 cents to \$2.50, with the largest number being sold at \$1 and \$1.95 each. A few years ago made-over hats sold for \$2.50 and more apiece. Some retail dealers keep the made-over hats on shelves, sometimes in boxes, with new hats. Other dealers display them on tables by themselves, with a price card stating the price at which they are to be sold. In no instance does the price card advise the purchaser that the hats are made-over hats.

Made-over hats are sold by retail dealers to purchasers in no different manner than are new hats. All of the stores sell new hats as well as made-over hats. The majority of retail dealers do not advise purchasers that the hats are made-over hats, but a few testified that they did tell the purchaser at the time the sale was made that the hat was a made-over hat. Some retail dealers do not say anything about the hats being made-over hats unless purchasers inquire as to why the hats are being sold so cheap, in which event they tell them that they are made-over hats. In an effort to sell higher priced hats, a few retail dealers advise purchasers that the hats are made-over hats and will not give as good service as will new hats.

The Commission finds that a large majority of retail dealers engaged in the sale of made-over hats to the public sell such hats without in any manner advising purchasers that the hats are made-over hats, and that such a method of sale has the capacity and tendency to mislead and deceive the purchasers of such hats into the belief that they are in fact new hats being sold at bargain prices. This results in a stimulation of the market for made-over hats and the curtailing of the market for new hats.

PAR. 13. Old, worn, used, and discarded men's fur felt hats which have been cleaned and fitted with new trimmings by respondents, as described in paragraph 5 hereinabove, are inferior in wearing qualities to new men's fur felt hats. The process of cleaning the old hats loosens the fibers of the felt and allows atmospheric conditions to affect the bodies to a greater extent than they do new felt bodies, the fibers of which are tightly integrated. Many of the old hats have

been in contact with wood ashes or other mineral matter after they have been discarded. Any mineral matter will affect any animal matter, of which felt hats are made, and will affect the textile strength of the fur fibers. When the hats are then put through the cleaning process to remove the grease and foreign matter the fibers are loosened and opened up. Gum tragacanth and shellac are used to stiffen the brims and crowns of made-over hats, but upon exposure to atmospheric conditions the stiffening effects are soon lost and the hats lose their shape due to the action of the elements. The felt bodies in made-over hats deteriorate rapidly and the made-over hats will not give as good service as will new hats.

In many cases it is impossible to completely remove stains and dirt spots from the old hats in the cleaning process, and the powder which is rubbed into the hats to cover such spots and other discolorations wears off. In such cases the old spots and stains reappear after the hat has been worn for a time.

Due to the careful treatment given the old hats by respondents during the process of making them over the defects set forth above are not visible by a careful examination, and will not show up until some time after the made-over hat has been worn. It is, therefore, impossible for the purchasing public to protect itself from buying inferior made-over hats unless there is some mark or other indication on the hats advising purchasers that the hats are in fact made-over hats, or unless the retail dealer tells the purchaser that the hat is a made-over hat, which is seldom done.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondents pay from \$1.50 to \$2.75 for the old, worn, used, and discarded hats which they buy for use in manufacturing made-over hats.

Five made-over hat manufacturers, including respondents, employ union labor in their factories, but the great majority do not. One made-over manufacturer using union labor pays the following wages in his factory for making over hats:

	<i>Per dozen</i>
Finishing bodies:	
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondents at least \$4.17 per dozen for labor costs in making their cheapest quality made-over hat; \$4.62 per dozen for their better grade; and \$4.42 per dozen for the average made-over hat which they make. Respondents pay \$2.75 per dozen for the best grade of old hat bodies which they buy, and \$1.50 per dozen for the cheapest grade, which makes their highest total labor and body costs for manufacturing finished made-over hats \$7.37 per dozen for the best grade, and \$5.67 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor which are no higher, if as high, as paid by new hat manufacturers, the total labor cost for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Men's finished fur felt made-over hats can be made by respondents at a cost of from \$4.40 to \$6.10 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced

the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondents and other made-over hat manufacturers.

PAR. 15. The manufacture and sale of men's made-over fur felt hats has greatly increased in volume in the past four or five years. Because such hats are sold to the public in retail stores devoted to the sale of new merchandise, without any mark or words on them to indicate that they are made-over hats, and at much lower prices than are charged for new hats, manufacturers of men's new fur felt hats have lost many of their customers owing to their inability to manufacture and sell new hats at a price to compete with made-over hats. In some instances they have had to close their branch factories. Manufacturers of new hats have had to continually decrease prices for their hats until some of them are selling at cost. Sales of new fur felt hat bodies have decreased even though prices have been reduced. "Dry shop" manufacturers have reduced their purchases of hat bodies for finishing, due to the competition of made-over hats; some of them have been forced out of business and others have bought made-over hats for sale to retailers who demand a hat which can be sold to the public at a low price.

Jobbers and wholesale dealers have lost customers because of the sale of made-over hats. Many jobbers and wholesale dealers do not sell made-over hats because they believe that the low price at which these hats sell is detrimental to the hat industry. Many retail dealers demand low-priced hats, and because these jobbers and wholesale dealers do not sell them, many of their retail customers buy their supply of made-over and new hats from other dealers who handle such hats. Other jobbers and wholesale dealers have been forced to handle made-over hats against their wishes because of the demand for cheap hats. The sales of new hats by jobbers and wholesale dealers have steadily decreased during the past few years, due to the increased purchase of made-over hats by retail dealers. Jobbers and wholesale dealers who sell new hats cannot compete with made-over hats because of the low prices at which the latter are sold. The competition of the made-over hat not only affects the sale of men's new fur felt hats, but has also resulted in a decrease in sales of wool felt hats, which is a hat made of wool which is sold at considerably lower prices than fur felt hats.

Retail stores handling men's new fur felt hats are losing business because of the competition of made-over hats. These stores are placed at a disadvantage over stores selling made-over hats because the latter



stores not only sell the made-over hats at a lower price than new hats can be sold for, but do not inform the purchasers that the hats are made-over hats, and there is nothing on the hats to indicate that fact. The sale of made-over hats by some retail stores forces other retail stores not handling such class of merchandise into price competition with stores selling low-priced and cheap merchandise.

PAR. 16. Respondents sell made-over hats to jobbers and wholesale dealers for resale to retail dealers and the purchasing public without any mark, word, or other indication on or about said hats that they are old, worn, used, and men's discarded fur felt hats which have been cleaned and fitted with new ribbons, linings, and leather sweatbands. Respondents advise jobbers and wholesale dealers to whom they sell that such hats are made-over hats. Many of the jobbers and wholesale dealers in reselling said hats to retail dealers do not advise them that the hats are made-over hats, and some retail dealers have bought made-over hats without knowing that said hats are made-over hats. The great majority of retail dealers in selling made-over hats to the public do not advise purchasers that the hats are not new hats but are in fact old hats which have been made over.

By the manufacture and sale of made-over hats which have the appearance of new hats, and which do not have on or about them any mark, word or words, or other indication showing that said hats are not new hats but are in fact old, worn, used, and discarded hats which have been cleaned and fitted with new ribbons, linings, and leather sweatbands, respondents enable jobbers and wholesale dealers to sell said hats to retail dealers, and retail dealers to sell said hats to the purchasing public as new hats.

The sale of said made-over hats in the manner described in the within findings is injurious to the public and competitors of respondents engaged in the manufacture and sale in interstate commerce of men's new fur felt and new wool felt hats. Such sale has the capacity and tendency to, and does in fact, injure the purchasing public because it misleads, deceives, and induces the public to buy such hats in the belief that they are new hats, and that they will give as satisfactory service in wearing qualities as will new hats. Many men would not buy said hats if they knew they were made-over hats because they would not wear a hat which had been previously worn by someone else, even though it had been thoroughly cleaned.

The sale of made-over hats by respondents has the capacity and tendency to, and does in fact, injure competitors of respondents engaged in the business of manufacturing and selling men's new fur felt and wool felt hats because: (1) It diverts to respondents from their said competitors the sales of men's new felt and new wool felt hats;

and (2) it prejudices the purchasing public against the new hat industry because of the deception and deceit in the sale of made-over hats to the public, and because made-over hats are sold at such low prices that competitors of respondents making men's new hats cannot meet such prices, owing to the higher manufacturing costs required to make new hats, and because said made-over hats are inferior in wearing qualities to new hats.

PAR. 17. Among the old, worn, used, and discarded hats purchased by respondents to be made over are many hats manufactured by John B. Stetson Co. and other manufacturers who have an established reputation for manufacturing men's high-grade felt hats. Respondents make over these high-grade hats in the same manner as they do the other made-over hats which they sell, put John B. Stetson Co. labels in them, and sell them to wholesale dealers and jobbers as John B. Stetson made-over hats. Respondents receive a higher price for the made-over hats which they sell as John B. Stetson made-over hats than they do for the highest grade made-over hats they sell which are not represented as John B. Stetson Co. hats.

Among the hats sold by respondents bearing labels of, and represented by them as being, hats manufactured by John B. Stetson Co. are many hats which were not manufactured by said John B. Stetson Co., but which were in fact manufactured by other hat manufacturers.

On or about September 5, 1929, a purchase of three dozen hats was made at the place of business of respondents by a witness in this proceeding. One dozen of the "best hats" made by respondents, and one dozen each of the lower grades, were requested. The purchaser was informed by a representative of respondents at the time of purchase that the better grade hats were "Stetson hats." When the hats were delivered they were packed in boxes—three hats to each box. On the top of each box in which were packed the twelve better grade hats was marked the word "Stetson." These hats were sent to the John B. Stetson Co. in Philadelphia, Pa., for microscopic and chemical examination in the laboratory of that company.

Dr. Ivor Griffith, in charge of the laboratory, has developed a method whereby he can tell what kinds of fur fibers are used in a felt hat by a microscopic examination. After determining the kinds of fur used and comparing the mixture with the various formulae used in the manufacture of felt hats by the John B. Stetson Co. he can determine whether the hats were manufactured by that company. On cross-examination Dr. Griffith was subjected to a test by counsel for respondents which showed that his conclusion that any given hat was not of John B. Stetson manufacture was trustworthy and definite.

Dr. Griffith testified that of the twelve hats sold by respondents as "Stetson hats", eleven of them were not hats manufactured by the

John B. Stetson Co., and the other one "may be" a Stetson hat, but because of its color he doubted that it was. Dr. Griffith explained in detail the reasons for his conclusions.

On or about February 26, 1932, a witness in this proceeding purchased six hats from T. D. Stokes & Sons, a jobber of hats in Richmond, Va. The purchaser asked for "Stetson made-over hats" and was supplied with six hats, each one bearing a label of the John B. Stetson Co. under the leather sweatband. A representative of T. D. Stokes & Sons testified that his company purchased these particular hats from respondents, and had them in stock for at least eight or nine months. They were represented by respondents to be "made-over Stetson hats", and T. D. Stokes & Sons paid a higher price for them than for the other grades of made-over hats purchased from respondents. T. D. Stokes & Sons paid respondents from \$19 to \$21.50 per dozen for Stetson made-over hats, whereas their other grades cost usually \$13.50 and \$16.50 per dozen.

These six hats had John B. Stetson Co. labels in them. They were turned over to the John B. Stetson Co. for microscopical examination. Dr. Ivor Griffith testified that three of these hats were not manufactured by John B. Stetson Co.—two of them "may be" Stetson hats and one of them "probably is" a Stetson hat.

PAR. 18. John B. Stetson Co. is a long-established and well-known manufacturer of men's hats, and the hats manufactured and sold by said company are of high quality, and have become well and favorably known to the public throughout the United States. The sale by respondents of made-over hats which are represented to be hats originally manufactured by John B. Stetson Co., and in which respondents have put labels of the said John B. Stetson Co., when in truth and in fact said hats were not originally manufactured by said company, is unfair to the John B. Stetson Co., and to wholesale dealers and jobbers and the purchasing public because: (1) It has the capacity and tendency to, and does in fact, induce said wholesale dealers and jobbers and the purchasing public to buy said hats in the belief that they are new hats manufactured by the John B. Stetson Co.; (2) it has the capacity and tendency to, and does in fact, induce said wholesale dealers and jobbers and the purchasing public to buy said hats, and pay a higher price therefor, because of the well-known quality of hats manufactured by John B. Stetson Co., relying on the false and deceptive representations made by respondents; and (3) such sales by respondents further have the capacity and tendency to, and do in fact, injure the business of the said John B. Stetson Co. because they divert to respondents from John B. Stetson Co. the sales of men's new fur-felt hats.

## CONCLUSION

The practices of respondents Morris Hochberg and David Hochberg, copartners, trading under the firm name and style of Grand Hat Co., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' 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 respondents, and the testimony taken and briefs filed herein, and oral argument of counsel, and the Commission having made its findings as to the facts, with 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 Morris Hochberg and David Hochberg, copartners, trading under the firm name and style of Grand Hat Co., their agents, representatives, and employees, in connection with the sale or offering for sale of men's hats in commerce among the several States of the United States and in the District of Columbia, cease and desist from:

(1) Selling or offering for sale men's old, worn, used, and discarded fur felt hats which have been cleaned and fitted with new ribbons, sweatbands, and linings unless and until there is stamped upon, affixed or attached to said hats in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said hats are not new hats but are used and worn hats which have been cleaned and made over (e.g., "second-hand", "used", or "made-over").

(2) Advertising or representing by means of labels, linings, oral statements, or in any other manner, that any hats sold by them are hats manufactured by a particular hat manufacturer, unless said hats were in fact manufactured by said hat manufacturer.

*It is further ordered,* That respondents shall within 60 days from the date of the service upon them 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  
**B. BRUCE BESSEMER, TRADING AS AMERICAN  
 ACADEMIC RESEARCH SOCIETY**

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

*Docket 2101. Complaint, Apr. 25, 1933—Order, June 17, 1933*

Consent order requiring respondent, his agents, etc., in connection with the sale or offer in interstate commerce of a set of reference works or encyclopedias, designated as "Progressive Reference Library Encyclopedia" to cease and desist from—

- (a) Advertising or representing in any manner that (1) any book or set of books offered and sold by him will be given free of cost, or that (2) a limited number of sets has been reserved to be given away free to a selected and limited number of persons as a means of advertising, or that (3) purchasers or prospective purchasers of the books are only buying or paying for loose-leaf supplements to keep the books up-to-date or are only buying or paying for services to be rendered by way of research for a period of ten years, or that (4) usual and regular price for supplemental and research service is substantially greater than \$39.50, or that a special price is being made to the prospective customer; when such various statements or representations are not true in fact;
- (b) Operating under the name and style "Mount Holyoke Research Society", unless and until purchasers and prospective purchasers are clearly informed that book or books sold are not sponsored by an educational institution known as "Mount Holyoke College", and representing that the "American Academic Research Society" has any connection with such college or that such publications are compiled or published by the college or faculty thereof;
- (c) Falsely representing, directly or indirectly, that a regular force or staff of educational experts or research workers is maintained for the purpose of supplying requested information to purchasers, or representing that any prominent educators, Government officials or others are connected with, or part of his editorial staff, or are contributors of data, or connected in any way with such publications, without first obtaining authority from such prominent educators, Government officials or others; and
- (d) Representing to prospective purchasers that the purchasing price of said publications is payable over a period of 10 years, when in fact payment is required in a shorter period of time.

*Mr. PGad B. Morehouse* 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 B. Bruce Bessemer, an individual, trading as "American Academic Research Society", has been and now is using unfair methods of com-

## Complaint

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petition 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, until January, 1932, under the name and style of "Mount Holyoke Research Society" and thereafter under the name and style of "American Academic Research Society" has been and now is engaged in the sale and distribution in interstate commerce of a certain set of reference works or encyclopedias, known and designated as "Progressive Reference Library Encyclopedia" by him purchased from the Holst Publishing Co. of Boone, Iowa, and Chicago, Ill., and resold through the media of direct mail advertising and agents or salesmen to persons located in various States of the United States, and respondent causes said books or publications when sold to be transported from his principal place of business at No. 81 Suffolk Street, in the city of Holyoke, Mass., through and into the other States of the United States to the purchasers thereof.

In the course and conduct of the aforesaid business, respondent is and has been in direct and substantial competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of encyclopedias, reference works, and similar publications.

PAR. 2. In the course and conduct of the aforesaid business, respondent falsely and fraudulently, in writing, represents by way of inducement to prospective purchasers that he is placing in each Congressional district a limited number of complimentary sets of a recently printed encyclopedia with a loose-leaf extension and research department, which is maintained at a very small charge to recipient; that for sale purposes he is authorized to present the said prospective purchaser with the latest edition with his compliments, the purchaser's name to be used for reference and requesting him to treat the matter as confidential; whereas in truth and in fact the respondent has no intention to, nor does he present the said prospective purchaser with a complimentary set of encyclopedias, nor is the number of such sets limited, except by the number of prospective purchasers whom respondent can persuade to buy. As the result of such false and fraudulent representations many prospective purchasers are and have been induced to buy from and pay respondent for a set of encyclopedias in ten or more volumes at a price of \$39.50 per set, usually paid in four instalments, and said purchasers are thereby led into the erroneous belief that by reason of their standing in their respective communities they have been specially selected to receive the said encyclopedias as a gift for advertising purposes, and that the sum of \$39.50 is to pay for the loose-leaf extension service to be furnished them by respondent over a 10-year period, whereas in truth and in fact respondent has made no special selection of

prospective purchasers and does not deliver the said set of encyclopedias unless and until the aforesaid instalment contract is entered into by and between said prospective purchaser and respondent, covering both the encyclopedias and the supplemental loose-leaf service, the true purpose, intent and effect of said contract being one of sale of both the encyclopedias and the service.

PAR. 3. In the course and conduct of the aforesaid business respondent falsely and fraudulently represents by way of inducement to prospective customers, that such purchasers are only buying and paying for loose-leaf supplements intended to keep the set of books up-to-date and for service to be rendered upon request by a Bureau of Educational Research for a period of 10 years next ensuing the sale, when in truth and in fact, the prospective purchasers are buying and paying for a set of encyclopedias and the supplements and the research service, but many members of the public, believing and relying upon the truth of said representations are misled and deceived into purchasing the said encyclopedias, supplements and research service from the respondent.

PAR. 4. In the course and conduct of the aforesaid business respondent falsely and fraudulently represents by way of inducement to prospective purchasers, that the usual and regular price for said supplements and service is substantially greater than \$39.50 and many members of the public believing and relying on the truth of said representation are misled and deceived into purchasing the said encyclopedias, supplements, and research service.

PAR. 5. In the course and conduct of the aforesaid business, prior to January, 1932, respondent operated under the name and style "Mount Holyoke Research Society", the use of which name in connection with such business and at the locality in which respondent was operating tended to and did confuse and mislead prospective and other purchasers into the erroneous belief that respondent was in some way connected with the well known educational institution for women known as Mount Holyoke College located at South Hadley, Mass., within 10 miles of respondent's principal place of business aforesaid, which confusion in connections and identities tended to and did increase and promote the sales of respondent's said books and service and in some cases respondent, acting through his agents and salesmen, specifically represented as an inducement to prospective purchasers that the said encyclopedia by him sold was compiled by the faculty of the aforesaid college, when in truth and in fact respondent was not connected or associated in this business with Mount Holyoke College and the faculty of said college did not compile said encyclopedia.

PAR. 6. By use of the names "Mount Holyoke Research Society" and "American Academic Research Society" in connection with the sale of the encyclopedia, supplements and research service as aforesaid, respondent in the course and conduct of this business, as an inducement to prospective purchasers falsely represents by implication that a regular force or staff of educational experts or research workers is maintained by him for the purpose of supplying requested information to purchasers, whereas in truth and in fact respondent does not maintain a regular staff or force of experts for such reference work but from time to time employs either students or recent graduates of colleges to make such researches as are requested, and, for the purpose of bringing the encyclopedia up to date, respondent purchases from the Holst Publishing Co. loose-leaf sheets at a cost of about 25 cents per year. Many members of the public believing and relying upon the false implication aforesaid are misled and deceived into purchasing the said encyclopedias, supplements, and service.

PAR. 7. In the course and conduct of the aforesaid business respondent falsely and fraudulently represents certain prominent educators, Government officials, and authors as being connected with, or a part of, his editorial staff, sources of information, contributors of local and specific data, and as correspondents furnishing various details, in such manner as to mislead the prospective purchasers into the erroneous belief that such educators, officials, authors, contributors and correspondents are directly connected with respondent, or the Holst Publishing Co. as part of a large editorial staff having charge of the publication of the encyclopedias known as "Progressive Reference Library Encyclopedia", when in truth and in fact many of said prominent educators, authors, officials and "contributors" have in no wise authorized their names to be so used and have no knowledge of their alleged and implied connection with the encyclopedias so sold by respondent. Many members of the public believing and relying upon the truth of the aforesaid representation and being influenced, in part, by the prominence of the educators, officials, authors and contributors so listed are misled and deceived into purchasing of respondent the aforesaid encyclopedias, loose-leaf supplements, and research service.

PAR. 8. In the course and conduct of the aforesaid business respondent by his salesmen, misrepresents the tenor and effect of the contracts solicited of many prospective purchasers by informing them that the aforesaid \$39.50 is payable over a period of 10 years, whereas in truth and in fact, the contract actually obtained and relied upon by respondent in collection of the \$39.50 where a sale is made, provides for payment of the \$39.50 within a period of one



year. Many prospective purchasers, not trained to read contracts carefully before signing the same, and believing and relying upon the truth of aforesaid misrepresentation have been misled and deceived into buying of respondent aforesaid encyclopedias, supplements and research service.

PAR. 9. Respondent, his agents, salesmen, representatives, and employees by means of each and every one of the false, deceptive and misleading representations and statements set forth above has sold and is selling the Progressive Reference Library Encyclopedia, including the loose-leaf extension and research service to members of the public throughout a substantial portion of the United States, which members of the public are thereby induced to purchase said publication, extension and research service because of the aforesaid false, deceptive, misleading statements, and representations.

PAR. 10. The above alleged acts and practices of the respondent 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 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 come on for final hearing by the Federal Trade Commission upon a complaint and respondent's answer waiving all further proceedings and consenting that the Commission may make, enter, and serve upon him an order to cease and desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises,

*It is now ordered*, That respondent B. Bruce Bessemer, an individual trading as "American Academic Research Society" and his agents, representatives, servants, and employees, in connection with the sale or offering for sale, in interstate commerce, of a certain set of reference works or encyclopedias known and designated as "Progressive Reference Library Encyclopedia" cease and desist as follows:

(1) From advertising or representing in any manner to purchasers or prospective purchasers that any book or set of books offered for sale and sold by him will be given free of cost to the said purchaser or prospective purchaser when such is not the fact.

(2) From advertising or representing in any manner to purchasers or prospective purchasers that a certain or limited number of sets or any set of books offered for sale or sold by him has been reserved to be given away free to a selected and limited number of persons as a means of advertising when such is not the fact.

## Order

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(3) From advertising or representing in any manner that purchasers or prospective purchasers of his books are only buying or paying for loose-leaf supplements intended to keep the set of books up-to-date or that purchasers are only buying or paying for services to be rendered by way of research for a period of 10 years next ensuing the sale.

(4) From advertising or representing in any manner that the usual and regular price for the said supplements and research service is substantially greater than \$39.50 or that a special price is being made to the prospective customer when such is not the fact.

(5) From operating under the name and style "Mount Holyoke Research Society" unless and until purchasers and prospective purchasers are clearly informed that the said book or set of books so sold and offered for sale are not sponsored by an educational institution known as Mount Holyoke College.

(6) From representing directly or indirectly that he, B. Bruce Bessemer, or the American Academic Research Society has any connection with Mount Holyoke College or that the said encyclopedia or reference works by him sold are compiled or edited by the aforesaid college or the faculty thereof.

(7) From directly or indirectly falsely representing by way of an inducement to prospective purchasers that a regular force or staff of educational experts or research workers is maintained by him for the purpose of supplying requested information to purchasers.

(8) From representing directly or indirectly that any prominent educators, Government officials, or others, are connected with or part of his editorial staff or are contributors of data or connected in any way with the said Progressive Reference Library Encyclopedia, without authority from the said prominent educators, or Government officials or others being first had and obtained.

(9) From representing to prospective purchasers that the purchasing price of the said set of reference works is payable over a period of 10 years when in truth and in fact the purchase price is required to be paid in a shorter period of time.

*It is further ordered,* That respondents, and each of them shall within 60 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, and each of them, have complied with the order to cease and desist hereinbefore set forth.

## ORDERS OF DISMISSAL

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BLEADON-DUN Co. Complaint, October 12, 1929. Order, September 22, 1932. (Docket 1703.)

Charge: Advertising falsely or misleadingly as to nature, qualities, and results of product, prices, and free goods; in connection with manufacture and sale of electrical appliances for use in treatment of diseases and afflictions.

Dismissed, after answer, by the following order:

"It appearing that respondent corporation is a bankrupt and is no longer engaged in the business described in the complaint, and the Commission being duly advised,

"*It is now ordered*, That the complaint herein be and the same is hereby dismissed without prejudice."

Appearances: *Mr. E. J. Hornbrook* for the Commission.

BORG-WARNER CORPORATION. Complaint, February 3, 1932.<sup>1</sup> Order, September 29, 1932. (Docket 1915.)

Charge: Acquiring stock in competitors in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of clutches, transmissions and other automotive equipment.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Sanders, Childs, Bobb & Westcott*, of Chicago, Ill., and *Kenworthy, Shallberg & Harper*, of Moline, Ill., for respondent.

LOUIS MARMOREK, DOING BUSINESS UNDER THE TRADE NAME AND STYLE, EDISON UNIT SALES Co. Complaint, November 9, 1931. Order, September 29, 1932. (Docket 1986.)

Charge: Assuming or using misleading trade or corporate name, misrepresenting product and advertising falsely or misleadingly as to terms of sale, service, and qualities of product; in connection with sale of electric light fixtures.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Edward E. Reardon* for the Commission.

WALNUT GROVE PRODUCTS Co. Complaint, January 18, 1932. Order, September 29, 1932. (Docket 1995.)

Charge: Advertising falsely or misleadingly as to properties or results of product; in connection with manufacture and sale of stock feeds and medicines to farmers and livestock growers.

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<sup>1</sup> Amended.

Dismissed, after answer, on recommendation of chief counsel.  
Appearances: *Mr. Alfred M. Craven* for the Commission.

MARCEL RAFFY AND CHARLES RAFFY, TRADING UNDER THE FIRM NAME AND STYLE OF RAFFY PARFUMS. Complaint, May 4, 1932. Order, September 29, 1932. (Docket 2031.)

Charge: Using misleading trade name and misbranding or mislabeling; in connection with manufacture and sale of perfumes and cosmetic specialties.

Dismissed, after answer, by the following order:

This matter coming on for hearing, upon the recommendation of the chief counsel and the facts disclosed by the report of the chief examiner, and it appearing that the business stated in the complaint to have been conducted by the respondents was conducted by one of the respondents only, namely, Marcel Raffy, and that said Marcel Raffy has been adjudicated a bankrupt and his property sold by order of the court, and that he is no longer in business.

*It is ordered*, That this proceeding be and the same is hereby dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. Benjamin Siet*, of New York City, for respondents.

PELMAN INSTITUTE OF AMERICA, INC. Complaint, September 24, 1931. Order, October 3, 1932. (Docket 1971.)

Charge: Advertising falsely or misleadingly as to business advantages; in connection with the giving of courses of instruction in mental training and in modern languages by correspondence.

Dismissed, after answer, without prejudice and without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission.

BIRD & SON, INC. Complaint, June 3, 1932. Order, October 17, 1932. (Docket 2042.)

Charge: Misrepresenting products as to nature thereof, and misbranding or mislabeling in said respect; in connection with the manufacture and sale of paper board products.

Dismissed, after answer and trial, without prejudice and without assignment of reasons.

Appearances: *Mr. Henry C. Lank* for the Commission.

GILBERT SPRUANCE CO., EUGENE COX AND JAMES DILLARD, individually and as secretary-treasurer and salesman, respectively, of said Gilbert Spruance Co. Complaint, May 15, 1931. Order, October 22, 1932. (Docket 1951.)

Charge: Bribing, in the offering and giving, to finishers, foremen and other employees of furniture manufacturers and others, without the knowledge or consent of their employers, of substantial sums of money as inducements to influence them to purchase and/or recommend purchase and use of respondent manufacturer's varnishes, substitute shellac, decorating enamels, and similar products, or as promised rewards for having so induced or recommended such purchase or use.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Palmer, Davis & Scott*, of Washington, D.C., and *Duane, Morris & Heckscher*, of Philadelphia, Pa., for respondents.

GALION METALLIC VAULT Co. Complaint, February 2, 1932. (Docket 2002); CLARK GRAVE VAULT Co. Complaint, February 2, 1932. (Docket 2003); SPRINGFIELD METALLIC CASKET Co. Complaint, February 6, 1932. (Docket 2006); NATIONAL GRAVE VAULT Co. Complaint, February 6, 1932. (Docket 2007); PERFECTION BURIAL VAULT Co. Complaint, February 6, 1932. (Docket 2008); and CHAMPION Co. Complaint, February 12, 1932. (Docket 2011). Orders, November 1, 1932.

Charge: Advertising falsely or misleadingly as to results or qualities of product, and guarantee thereof, and disparaging and misrepresenting competitive product; in connection with the manufacture and sale of metal grave vaults and metal caskets used to incase or inclose a coffin or body in the burial of the dead.

Dismissed, after answers, for the reason that respondents have signed and agreed to abide by the Trade Practice Conference rules for the metal burial vault industry.<sup>1</sup>

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Waite, Schindel & Bayliss*, of Cincinnati, Ohio, for respondents Galion Metallic Vault Co. and National Grave Vault Co.; *Schooler &*

<sup>1</sup> The trade rules covering the practices alleged in the complaints, read:

*Rule 2.*—The making or causing or permitting to be made or published any false, untrue, or deceptive statement, by way of advertisement or otherwise, concerning the use, grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, and the tendency to injuriously affect the business of competitors, is an unfair trade practice.

*Rule 3.*—The sale or offering for sale of any product of the industry by any false means or device which has the tendency and capacity to mislead or deceive customers or prospective customers as to the use, quantity, quality, substance, or size of such product, and the tendency to injuriously affect the business of competitors, is an unfair trade practice.

*Rule 7.*—The issue by manufacturers of metal burial vaults of agreements in the form of written or printed warranties (so-called guarantees) which contain untrue and misleading statements and representations respecting the durability of their products underground, giving due consideration to the weight, method of construction, testing and character of metal used, with the tendency and capacity to mislead and deceive purchasers or prospective purchasers and having the tendency and capacity to injuriously affect the business of competitors, is an unfair trade practice.

*Blake*, of Columbus, Ohio, for Clark Grave Vault Co.; *Martin & Corry*, of Springfield, Ohio, for Springfield Metallic Casket Co.; *Mr. Herman L. Weisman*, of New York City, for Perfection Burial Vault Co.; and *Todd, Tehan & Lorentz*, of Springfield, Ohio, for Champion Co.

SAKS & Co. Complaint, July 26, 1932. Order, November 2, 1932. (Docket 2063.)

Charge: Disparaging and misrepresenting competitors' products; in connection with sale of shoes.

Dismissed, after stipulation, by the following order:

This matter coming before the Commission upon a stipulation for the public record executed by attorneys for respondent, which stipulation has been accepted by the Commission, and the Commission being fully advised in the premises,

*It is ordered*, That the complaint in this case be and the same is hereby dismissed, and the stipulation executed by attorneys for respondent be filed as part of the public record in this case.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Covington, Burling & Rublee*, of Washington, D.C., and *Chadbourne, Stanchfield & Levy*, of New York City, for respondent.

JASON WEILER-BAIRD NORTH & Co., INC. Complaint, January 25, 1932. Order, December 3, 1932. (Docket 2000.)

Charge: Advertising falsely or misleadingly as to business status or operations; in connection with the sale of diamonds, watches, rings, jewelry, etc.

Dismissed for the reason that respondent "has been dissolved since the issuance and service of the complaint."

Appearances: *Mr. Edward L. Smith* for the Commission; *Frodel & Stanley*, of Washington, D.C., for respondent.

W. C. HAMILTON & SONS. Complaint, October 9, 1931. Order, December 6, 1932. (Docket 1974.)

Charge: Advertising falsely or misleadingly as to quality of product; in connection with the manufacture and sale of various grades of book and printing papers and social stationery.

Dismissed by the following order:

This matter coming on for consideration, and it appearing that respondent corporation has changed its trade terms from "hand laid" for machine made products, as charged in the complaint, to "hand made style", and the Commission being fully advised in the premises:

*It is hereby ordered*, That this proceeding be and the same is hereby dismissed without prejudice.

Appearances: *Mr. Eugene W. Burr* for the Commission.

AMERICAN INSTITUTE OF MENTALISM ET AL.<sup>1</sup> Complaint, June 20, 1930. Order, January 24, 1933. (Docket 1851.)

Charge: Advertising falsely or misleadingly as to nature and results of product dealt in, indorsements accorded, prices and free products; in connection with the sale of various books, pamphlets and other literature and so-called "Lucky Sheckels."

Dismissed, after answer and stipulation, by the following order:

This matter coming on for consideration upon the pleadings, a stipulation as to the facts in lieu of testimony, a letter from respondents waiving the privilege of written and oral argument, and memorandum from the chief counsel, and the Commission being fully advised in the premises,

*It is hereby ordered*, That the above proceeding be and the same hereby is dismissed.

Appearances: *Mr. Eugene W. Burr* for the Commission.

POND'S EXTRACT Co. Complaint, March 14, 1932. Order, February 10, 1933. (Docket 2019.)

Charge: Advertising falsely or misleadingly as to testimonials and endorsements; in connection with the manufacture and sale of toilet preparations, including vanishing cream, cold cream, cleansing tissues and skin freshener.

Dismissed, after answer, without assignment of reasons and without prejudice.

Appearances: *Mr. Harry D. Michael* for the Commission; *Blake & Vorhees*, of New York City, for respondent.

SAN MARTIN & LEON Co., INC. Complaint, April 21, 1927. Order, February 14, 1933. (Docket 1458.)

Charge: Naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly; in connection with the sale of cigars.

Dismissed by the following order:

It appearing to the Commission that respondent, San Martin & Leon Co., Inc., has ceased doing business; and upon consideration whereof;

*It is now ordered*, That the complaint herein be and the same is hereby dismissed without prejudice.

Appearances: *Mr. Henry Miller* for the Commission.

<sup>1</sup> Respondents are specified in the caption of the complaint as "American Institute of Mentalism, a corporation, doing business under the trade names and styles of A. Victor Segno, A. D. Segno, Segno Success Club, American Institute, and Life Culture Society; Mrs. A. D. Robinson, H. T. Robinson, as individuals and as officers of the American Institute of Mentalism."

AMERICAN CIGAR Co. Complaint, March 29, 1932. Order, February 15, 1933. (Docket 2023.)

Charge: Advertising falsely or misleadingly as to competitive products and official endorsements; in connection with manufacture and sale of cigars.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission, on motion filed by the respondent on January 11, 1933, to dismiss the complaint, and the Commission having heard oral argument from counsel for the respondent and counsel for the Commission and having duly considered the said motion and argument and being now fully advised in the premises:

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Covington, Burling & Rublee* and *Mr. John Marshall*, of Washington, D.C., and *Chadbourn, Stanchfield & Levy*, of New York City, for respondent.

CHATHAM MANUFACTURING Co. Complaint, March 26, 1930. (Docket 1777); W. S. LIBBEY Co. Complaint, May 5, 1930. (Docket 1824); DORMAN MILLS, INC. Complaint, November 22, 1930. (Docket 1877); WINTHROP MILLS Co. Complaint, January 31, 1931. (Docket 1908); TENNESSEE WOOLEN MILL Co. Complaint, February 25, 1931. (Docket 1919); and ARNCO MILLS. Complaint, February 26, 1931. (Docket 1920). Orders, February 17, 1933.

Charge: Misbranding or mislabeling and advertising falsely or misleadingly; in connection with the sale of blankets.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Olvany, Eisner & Donnelly*, of New York City, for W. S. Libbey Co.; *Mr. Guy Cunningham*, of Boston, Mass., for Dorman Mills; and *Mr. A. H. Freeman*, of Newnan, Ga., for Arnco Mills.

UNITED STATES GYPSUM Co. Complaint, June 13, 1931. Order, February 28, 1933. (Docket 1958.)

Charge: Naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling as to qualities; in connection with manufacture and sale of certain building materials.

Dismissed, after answer, stipulation and trial, without assignment of reasons.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Scott, MacLeish & Falk*, of Chicago, Ill., for respondent.



HEALTH-MOR SANITATION SYSTEMS, INC., ET AL.<sup>1</sup> Complaint, June 30, 1932. Order, February 28, 1933. (Docket 2054.)

Charge: Inducing breach of contract through false and misleading representations, misrepresenting source or connection of product, misrepresenting business status or connections, misrepresenting competitors, enticing competitors' employees wrongfully, harassing competitors wrongfully, and simulating appearance, labels, trade names, etc. of competitors' products; in connection with sale of a vacuum cleaner.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. PGad B. Morehouse* for the Commission; *Mr. Charles S. Moore*, of Washington, D.C., for respondents.

ROGERS SILVERWARE REDEMPTION BUREAU, INC. Complaint, May 7, 1931. Order, March 1, 1933. (Docket 1945.)

Charge: Misrepresenting business identity, affiliations and operations, misrepresenting product as free, and advertising falsely or misleadingly in said respect; in connection with the sale of coupons or redemption cards.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Mr. Edmund M. Toland*, of Washington, D.C., and *Mr. Nathan Burkan*, of New York City, for respondent.

THE LIMOGES CHINA CO., ET AL.<sup>2</sup>—Complaint, June 22, 1929.<sup>3</sup> Order, March 2, 1933. (Docket 1570.)

Charge: Threatening patent infringement suits, not in good faith; in connection with the manufacture and sale of earthenware, china-ware, porcelainware, and/or pottery.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Baldwin B. Bane* and *Mr. Richard P. Whiteley* for the Commission; *Byrnes, Stebbins, Parmalee & Blenke*, of Pittsburgh, Pa., for respondents.

NATIONAL RADIUM Co. Complaint, October 24, 1932. Order, March 8, 1933. (Docket 2072.)

Charge: Advertising falsely or misleadingly as to nature and results of product; in connection with the manufacture and sale of a certain water container, termed by it "Radium Vitalizer".

Dismissed, after answer, for the reason that "respondent has ceased doing business".

Appearances: *Mr. Robert H. Winn* for the Commission.

<sup>1</sup> Respondents not specified include 5 individuals, joined in their individual capacity and as officers of said respondent corporation.

<sup>2</sup> Respondents also include The Sebring Pottery Co., The Salem China Co., and The Crescent China Co.

<sup>3</sup> Amended.

THE FLEISCHMANN CO. AND STANDARD BRANDS, INC. Complaint, November 30, 1931. Order, March 11, 1933. (Docket 1989.)

Charge: Advertising falsely or misleadingly as to testimonials or endorsements; in connection with the manufacture and sale of yeast.

Dismissed, after answer, without prejudice and without assignment of reasons.

Appearances: *Mr. Harry D. Michael* for the Commission; *Mr. J. Harry Covington*, *Mr. John Marshall*, and *Mr. Dean Acheson*, of Washington, D.C., for respondents.

STANDARD BRANDS, INC. Complaint, March 11, 1932. Order, March 11, 1933. (Docket 2018.)

Charge: Advertising falsely or misleadingly as to testimonials and endorsements; in connection with sale of coffee.

Dismissed, after answer, without prejudice and without assignment of reasons.

Appearances: *Mr. Edward L. Smith* for the Commission; *Mr. J. Harry Covington*, and *Mr. John Marshall*, of Washington, D.C., for respondent.

SHERMAN VON WALDEN. Complaint, April 28, 1931. Order, March 20, 1933. (Docket 1942.)

Charge: Misrepresenting business or professional status, nature and results of product or service, and testimonials and advertising falsely or misleadingly in said respects; in connection with sale of a system or method for purported treatment of many of the ailments and diseases of the human body.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Clinton Robb*, of Washington, D.C., for respondent.

AETNA FIRE BRICK CO., ET AL. Complaint, May 22, 1928. Order April 11, 1933. (Docket 1527.)<sup>1</sup>

<sup>1</sup> Respondents not specified include:

Alsey Brick & Tile Co.; Ashland Fire Brick Co.; Big Savage Fire Brick Co.; Brighton Fire Brick Co.; Buckeye Fire Brick & Clay Co.; Climax Fire Brick Co.; Crescent Refractories Co.; Davis Fire Brick Co.; William E. Dee Co.; Diamond Fire Brick Co.; W. S. Dickey Clay Manufacturing Co.; Elk Fire Brick Co.; Eureka Fire Brick Co.; Evens & Howard Fire Brick Co.; Farber Fire Brick Co.; Federal Clay Products Co.; James Gardner, Jr., Co.; Garfield Fire Clay Co.; A. P. Green Fire Brick Co.

Hammond Fire Brick Co.; Harblson-Walker Refractories Co.; Haws Refractories Co.; Hydraulic-Press Brick Co.; Ironton Fire Brick Co.; Kentucky Fire Brick Co.; Kler Fire Brick Co.; Laclede-Christy Clay Products Co.; Lavino Refractories Co.; Louisville Fire Brick Works; McFeely Brick Co.; McJain Fire Brick Co.; Niles Fire Brick Co.; Oak Hill Fire Brick & Coal Co.; Ohio Refractories Co.; Osceola Silica & Fire Brick Co.; Parker-Russell Mining & Manufacturing Co.; Frank B. Pope, trading under the name and style of Frank B. Pope Co.; Portsmouth Refractories Co.; Pyro Clay Products Co.

Queens Run Refractories Co., Inc.; Savage Mountain Fire Brick Co.; Sharon Fire Brick Co.; Jos. Solsson Fire Brick Co.; South Fork Fire Brick Co.; Standard Fire Brick Co.; Superior Silica Brick Co.; Charles Taylor Sons Co.; Union Mining Co.; United Refractories Co.; United States Refractories Corp.; Walsh Fire Clay Products Co.; Welch-Bright Co.; Wellsville Fire Brick Co.; Western Fire Brick Co.; J. J. Brooks, Jr.; Frederick W. Donahoe; H. H. Hopwood; J. M. McKinley.

Charge: Cooperating, combining and conspiring to restrain and suppress competition and to unduly enhance prices and bring about uniformity thereof; in connection with the manufacture and sale of refractories or fire brick shapes, made of fire clay and/or silica; by some 55 concerns, including in their number the largest manufacturer in the United States, and manufacturing and selling a large and substantial percentage of all refractories made and sold in the United States, and several individuals, officers of aforesaid respondents or of groups thereof.

Dismissed, after answers, without assignment of reasons and without prejudice.

*Mr. Harry D. Michael* for the Commission.

*Knapp & Campbell*, of Chicago, Ill., for Alsey Brick & Tile Co. and Kentucky Fire Brick Co.

*Hager, Pritchard & Malin*, of Ashland, Ky., for Ashland Fire Brick Co.

*Sanders, Childs, Bobb & Wescott*, of Chicago, Ill., for Buckeye Fire Brick & Clay Co.

*J. Merrill Wright*, of Pittsburgh, Pa., for Climax Fire Brick Co., Crescent Refractories Co., Eureka Fire Brick Co., Lavino Refractories Co., Louisville Fire Brick Works, McLain Fire Brick Co., Osceola Silica & Fire Brick Co., Frank B. Pope Co., South Fork Fire Brick Co., Charles Taylor Sons Co., H. H. Hopwood, J. M. McKinley, and also along with *Mr. George Henderson*, of Cumberland, Md., for Union Mining Co.

*Mr. T. M. Pierce*, of St. Louis, Mo., for W. S. Dickey Clay Manufacturing Co., Evens & Howard Fire Brick Co., Farber Fire Brick Co., A. P. Green Fire Brick Co., Laclede-Christy Clay Products Co., and Western Fire Brick Co.

*Mr. D. J. Driscoll*, of St. Marys, Pa., for Elk Fire Brick Co.

*Mr. J. C. Davies* of Johnstown, Pa., for Garfield Fire Clay Co., and Haws Refractories Co.

*Mr. James E. MacCloskey, Jr.*, of Pittsburgh, Pa., for Harbison-Walker Refractories Co., Walsh Fire Clay Products Co., J. J. Brooks, Jr., and also along with *Kennedy, Manchester, Conroy & Ford*, of Youngstown, Ohio, for Niles Fire Brick Co.

*Eliot, Blayne & Bedal* of St. Louis, Mo., for Hydraulic-Press Brick Co.

*Mr. A. R. Johnson*, of Ironton, Ohio, for Ironton Fire Brick Co.

*Dickey, Kier & McCamey*, of Pittsburgh, Pa., for Kier Fire Brick Co.

*Mr. Frank B. Hargrave*, of Latrobe, Pa., for McFeely Brick Co. and Superior Silica Brick Co.

*Robert & Robert* of St. Louis, Mo., for Parker-Russell Mining & Manufacturing Co.

*Mr. Calvin Clarke*, of Portsmouth, Ohio, for Portsmouth Refractories Co.

*Mr. Frank H. Deal*, of Troy, N.Y., for Queens Run Refractories Co., Inc.

*Mr. Robert P. Smith*, of Washington, D.C., for Savage Mountain Fire Brick Co. and United States Refractories Corp.

*Adams & Gast*, of Pueblo, Colo., for Standard Fire Brick Co.

*Mr. Nathan B. Williams*, of Washington, D.C., for Frederick W. Donahoe.

*Mr. John H. Evans*, of Sharon, Pa., for J. V. Rose, administrator of the estate of W. G. Rose, deceased, present owner of property and assets of Sharon Fire Brick Co. (dissolved).

ARMOUR & CO. AND ARMOUR & CO. OF DELAWARE. Docket 1423; THE GLOBE SOAP CO. Docket 1424; THE CINCINNATI SOAP CO. Docket 1425; PEET BROTHERS CO. Docket 1426. Complaints, September 7, 1926. HOYT BROTHERS, INC. Docket 1510. Complaint, April 7, 1928. Orders, May 8, 1933.

Charge: Naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly; in connection with the manufacture and sale of toilet soaps and soap products.

Dismissed, after stipulation, without assignment of reasons.

*Mr. Edward E. Reardon* for the Commission; *Mr. Charles J. Faulkner, Jr.* and *Mr. R. F. Feagans*, of Chicago, Ill., for Armour and Co. and Armour and Co. of Delaware.

*Mr. Joseph Wilby*, of Cincinnati, Ohio, for The Globe Soap Co.

*Moulinier, Bettman & Hunt*, of Cincinnati, Ohio, for The Cincinnati Soap Co. and Hoyt Brothers, Inc.

*Lathrop, Morrow, Fox & Moore*, of Kansas City, Mo., for Peet Brothers Co.

GEORGE W. WHEELWRIGHT PAPER CO. Complaint, October 20, 1930. Order, May 19, 1933. (Docket 1866.)

Charge: Advertising falsely or misleadingly and otherwise misrepresenting as to source or origin and nature and composition of product, in designation of certain paper products as "Italiano Hand Made Vellum", said products being neither Italian made, made by hand, nor of genuine vellum.

Dismissed, after answer, "for the reason that respondent is in the hands of a receiver and that the practices charged in the complaint have been discontinued."

Appearances: *Mr. Edward E. Reardon* for the Commission.

HOME DRUG Co. Complaint, March 14, 1933. Order, May 20, 1933. (Docket 2094.)

Charge: Advertising falsely or misleadingly as to nature and results of product and symptoms and ailments for which offered; in connection with sale of product for gall bladder, liver and stomach disorders.

Dismissed by the following order:

This proceeding coming on for consideration by the Commission, and it appearing that the practices complained of in the complaint herein have been abandoned before the issuance and service of the complaint and that there is no evidence that the respondent intends to resume such practices.

*It is ordered,* That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Robert H. Winn* for the Commission; *Mr. Eugene L. Culver*, of Washington, D.C., for respondent.

ARTHUR R. PATTERSON, individually, and doing business under the trade name and style of "Patterson School". Complaint, May 8, 1931. Order, May 26, 1933. (Docket 1946.)

Charge: Advertising falsely or misleadingly as to demand for, and possibilities and results of service offered; in connection with the sale, by mail and otherwise, of a course of instruction for Civil Service examinations.

Dismissed, after answer and trial, by the following order:

This matter having been considered upon appeal from certain rulings of the trial examiner and upon motion by counsel for the respondent for dismissal of the complaint; and the Commission being being fully advised in the premises,

*It is now ordered,* That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Henry Miller* for the Commission; *Spencer, Ogden & Spencer*, of Rochester, N.Y., for respondent.

AMMUNITION MANUFACTURERS' ASSOCIATION ET AL.<sup>1</sup> Complaint, October 1, 1931. Order, June 16, 1933. (Docket 1973.)

Charge: Combining or conspiring to restrict and suppress competition, in connection with the sale and distribution in interstate commerce, of ammunition, particularly shotgun shells and small arms ammunition; by respondent members, occupying a dominant and preponderant position in business concerned and controlling ap-

<sup>1</sup> Members of said association, joined as respondents, follow: Remington Arms Co., Inc., Winchester Repeating Arms Co., U.S. Cartridge Co., Peters Cartridge Co., and Western Cartridge Co.

proximately 90 percent of total output of products involved in United States.

Dismissed, after answer and trial, without assignment of reasons and without prejudice.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Mr. Raymond A. Walsh, of Washington, D.C.*, for Remington Arms Co., Inc., *Alexander & Green*, of New York City, for U.S. Cartridge Co., *Frost & Jacobs*, of Cincinnati, Ohio, for Peters Cartridge Co. and *Mr. William J. Matthews*, of Chicago, Ill., for Western Cartridge Co.

# STIPULATIONS<sup>1</sup>

## DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST<sup>2</sup>

969. **False and Misleading Brands or Labels and Unit Quantities—Glass Bottles or Flasks.**—Respondent, an individual, engaged in the manufacture, sale, and distribution of glass bottles or flasks 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 words "one pint" blown in, impressed or otherwise stamped upon the bottles or flasks sold and distributed by him in interstate commerce, when said products have a capacity less than one pint. Respondent also agreed to cease and desist from the sale and distribution in interstate commerce of bottles or flasks of the approximate shape and size of the full pint standard containers but whose actual capacity is less than a pint, with any words, marks, or impressions thereon or therein which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said containers are of full pint capacity, 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. (Sept. 23, 1932.)

970. **False and Misleading Brands or Labels—Overalls.**—Respondent, an individual, engaged in the manufacture of overalls and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corpora-

<sup>1</sup> For false and misleading advertising stipulations effected through the commission's special board. See p. 404, *et seq.*

<sup>2</sup> Published, after deleting names 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, July 18, 1932, to June 18, 1933, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 968, inclusive—may be found in vols. 10 to 16 of the Commission's decisions.

tions 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 figure and abbreviation "8 oz." on the brands or labels affixed to the 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 manufactured from materials which weigh 8 ounces to the yard, 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. (Sept. 23, 1932.)

**971. False and Misleading Brands or Labels—General Merchandise and Knit Underwear.**—Respondent, engaged in the sale and distribution in interstate commerce of general merchandise, including knit 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 sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking, branding, or labeling any of its products with any false, fictitious, or misleading brands or labels concerning the price or value of the same.

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. (Sept. 23, 1932.)

**972. False and Misleading Advertising—Radio Sets.**—Respondent, engaged in the sale and distribution of radio sets 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 an alleged list or other price purporting to be or to have been the price at which its said products were sold or were intended to be sold, when such is not the fact; from furnishing or placing in the hands of its dealer customers or others, for use by them, advertising matter in which is set forth an alleged list or other price purporting to be or to have been the price at which its said products were sold or



were intended to be sold, when such is not the fact; from the use in its advertisements and advertising matter distributed in interstate commerce of any and all statements and representations concerning an alleged list or other price or value 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 price or value is that at which said products, or any of them, were intended to be and were sold in the usual course of retail trade, 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. (Oct. 23, 1932.)

973. **False and Misleading Brands or Labels—Window Shade Cloth.**—Respondent, engaged in the manufacture and sale of window shade cloth and in the sale and distribution of the said product and also of mounted window shades 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 "mill-run" as a mark, stamp, brand, or label for those products 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 products are made of that quality of material commonly known and accepted in the trade and by the purchasing public as "mill-run", 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. (Oct. 17, 1932.)

974. **False and Misleading Advertising—Refrigerators.**—Respondent, a corporation engaged in the sale and distribution of sheet metal products and refrigerators 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 refrigerators in interstate commerce, agreed to cease and desist forever from the use of the words "all steel" and/or "all metal" in its advertisements or advertising matter distributed in interstate commerce; and from the use of the words "steel" and/or "metal" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into

the belief that said products are constructed in their entirety of steel or of metal, 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. (Oct. 19, 1932.)

**975. False and Misleading Brands or Labels—Paint Pigment.**—Respondent, a corporation, engaged in the manufacture of a paint pigment in paste form 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 words "lead and zinc" either independently or in connection or conjunction with any other word or words on its brands or labels affixed to 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 said product is composed of zinc oxide and sulphate of lead or carbonate of lead in approximately equal proportions of 50 percent by weight of the 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. (Oct. 19, 1932.)

**976. False and Misleading Advertising—Stomach Tablets.**—Respondent, a corporation, engaged in the sale and distribution of a preparation in tablet form 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 in its advertisements and advertising matter having interstate distribution of any and all statements and representations which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the said product contains, possesses, or has therapeutic value in excess of what is actually the case, or that the said product is or constitutes an efficacious treatment or relief for and correction of stomach disorders such as ulcers of the stomach, 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. (Oct. 19, 1932.)

977. **False and Misleading Advertising—Merchandise Coupons and Advertising Matter.**—Respondent, an individual, 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 competition with other 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 merchandise in interstate commerce, agreed to cease and desist forever from the use in contracts and coupons, or in advertisements and advertising matter circulated in interstate commerce of ambiguous and misleading statements and representations respecting the terms and conditions upon which sales are made, and especially in reference to the delivery of premiums; the use in contracts, coupons, or in advertisements and advertising matter circulated in interstate commerce, of statements and representations to the effect that he is engaged in a 90-day or any other short or other time advertising campaign, when such is not the fact; stating and representing, directly or indirectly, in contracts, coupons, advertisements, or advertising matter circulated in interstate commerce that the cameras or other merchandise which he distributes are given free, when such is not the fact, and/or when the cost thereof is included in the remittance received and alleged to be for other merchandise or for packing and shipping; the use in contracts, coupons, advertisements, advertising matter, or by word of mouth of any statements or representations which may have the tendency and effect to confuse, mislead, or deceive customers or prospective customers into the belief that the premiums are delivered to the retailer, and that said respondent is engaged in a 90-day or any other short or other time advertising campaign or that his premiums are given free, when such is not the fact.

Respondent also agreed that if he 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 him in the trial of the complaint which the Commission may issue. (Oct. 19, 1932.)

978. **False and Misleading Trade Name, Business Status, and Advertising—Pond Lily Bulbs, Canary Birds, Fish and Supplies Therefor.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of pond lily bulbs, canary birds, fish and supplies for the care and feeding thereof, 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 its products in interstate commerce, agreed to cease and desist forever from the use in advertisements or advertising matter or in catalogs, letterheads, or other stationery of the word "Fisheries" or any other word or words either independently or in connection or conjunction each with the other, or with any pictorial representation of the kind described; and from the use of any such words, figures, or pictorial representation, either independently or in connection or conjunction each with the other, or with any other words, figures, or representations which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said respondent owns, controls, or operates hatcheries wherein the fish which he sells and distributes are hatched or bred, 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. (Oct. 19, 1932.)

**979. False and Misleading Trade Name, Business Status, and Advertising—Correspondence Courses in Business Methods.**—Respondent, an individual, engaged in the business of selling courses of instruction in business methods by correspondence 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 courses of instruction, lessons, and instruction books and papers in interstate commerce, agreed to cease and desist forever from the use of the word "University" as a part of or in connection with the trade name or style under which he does business, and from the use of statements or representations suggesting or implying that there is a demand for civil-service employees in the departments or bureaus of the United States Government; and from the use of any words in advertisements or advertising matter, contracts, or by word of mouth through solicitors, correspondence, or in any other way which may have the tendency or effect to confuse, mislead, or deceive pupils or prospective pupils into the belief that any department or bureau of the United States Government is in need of civil-service employees, 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. (Oct. 26, 1932.)

**980. Simulating Trade Name of Competitive Product and Container Thereof—Dental Supplies.**—Respondent, a corporation, engaged in the sale and distribution of a line of dental supplies and dental instruments 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 catalogs and/or price lists of the word "Heatless" to describe engine wheels not made by a certain competitor of respondent, and of containers resembling or simulating the containers in which the "Heatless" wheels of respondent's competitor are sold and distributed; and from the use of the word "Heatless" in catalogs and/or price lists and/or of containers in which the same are packed, sold, and distributed, singly or in combination each with the other, in a way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so described and represented are the products of respondent's competitor, 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. (Oct. 31, 1932.)

**981. False and Misleading Advertising—Typewriter Ribbons.**—Respondent, a corporation, engaged in the manufacture, sale, and distribution of typewriter ribbons 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 "Silk" either independently or in connection or conjunction or combination with the prefix "semi" or with any word or words in its circulars or other 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 products are composed of silk either in whole or in part, 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. (Oct. 31, 1932.)

982. **False and Misleading Advertising—Rabbit Feed.**—Respondent, a corporation, engaged in the manufacture of a rabbit feed in pellet form 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 any and all statements and representations 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 effective as a vermifuge or anthelmintic, or that it is efficacious in removing worm parasites from rabbits or that it is an effective remedy or treatment for all types of worms with which rabbits may be infected, when such is not the fact; unless, when, and if the said product is in truth and in fact effective as represented for a particular type or specie of worm, then in which case the said statements or representations shall be limited to that particular type or specie of worm for which the said product has been proven to be and is an effective treatment. The said corporation also agreed to cease and desist from the use in its said advertising matter of any and all statements or representations which may have the capacity and tendency to mislead and deceive purchasers into the belief that bloat, dysentery, constipation, inability to breed and high mortality necessarily indicate that a rabbit has worms, 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. (Oct. 31, 1932.)

983. **Misrepresenting Product—Wood Frame Card Tables.**—Respondent, a corporation, engaged in the manufacture of wood-frame card tables and other similar products, 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, agree to cease and desist forever from the use of the words "hard wood" to describe, designate or represent products not made of hard wood as that term is commonly understood by the purchasing public; and from the use of the words "hard wood" in any way which may confuse, mislead, or deceive purchasers into the belief that the product so described, designated, and referred to is made of hard wood, 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. (Oct. 31, 1932.)

**984. False and misleading Brands or Labels—Braid and Shoe Laces.**—Respondent, a corporation, engaged in the manufacture, sale, and distribution of braid and shoe laces 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 any other word or words, as a mark, brand, or label on its products so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce are made from silk, the product of the cocoon of the silk worm, when such is not the fact; and from the use of the word "silk" 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 marked, represented, or labeled are made from 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. (Nov. 3, 1932.)

**985. Resale Price Maintenance—Gas Stoves, Ranges, Burners, and Accessories, Including Bottled Gas.**—Illinois Bottled Gas Co. 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 located in the city of Chicago, in the State of Illinois. It is now and for more than one year last past has been engaged in the sale and distribution in commerce between and among various States of the United States of gas stoves, gas ranges, gas burners, and accessories therefor, including bottled gas, said products being manufactured by the Protane Corporation of Erie, Pa., and known as "Protane" products, causing said products, when sold, to be shipped from its 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 its business, said Illinois Bottled Gas 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, including bottled gas.

In the course and conduct of its business as described above, Illinois Bottled Gas Co. caused its products to be sold and distributed among the retail trade located in various States of the United States, such sales being effected chiefly through dealer agents each of whom sold in a restricted territory. In the course of its business said Illinois Bottled Gas Co. adopted a system providing for the cooperation of the said trade in the maintenance and enforcement of prices established or suggested by it and at which its products should be sold by the retailer to the consuming public. Said company caused it to be generally known that it expected and would require its customers to maintain and observe the resale prices established or suggested by it; and as a means of affecting the carrying out of its said system, said company caused the following provision to be inserted in and to form a part of its contracts with its dealer agents: "To sell Protane Corporation products at established list prices", with the result that prices at which said products were sold were uniform and consistent with the aforesaid agreement.

*It is further stipulated and agreed*, by and between the said William E. Humphrey, chairman of the Federal Trade Commission, and Illinois Bottled Gas Co., that said Illinois Bottled Gas Co. hereby agrees, in soliciting the sale of and selling its products in interstate commerce, to cease and desist forever from the use of the following cooperative methods, or any of them: Seeking or securing from the retail or other trade, agreements, promises, or assurances of cooperation with said corporation in the maintenance of any system of resale prices whatever; including in its contracts with its dealer agents any promise or agreement to maintain the retail prices established or suggested by it for the resale of its products; directly or indirectly establishing or carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices on its products by its dealer customers.

*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. (Nov. 3, 1932.)

986. Rescinded.

987. False and Misleading Brands or Labels, Prices and Advertising—Mattresses.—Respondent, a corporation, engaged in the manufacture of mattresses 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 suggesting and recommending the adoption by its customers of any plan involving the statement and representation that said customers are offering the company's products for sale at greatly reduced prices, when such is not the fact; offering to supply, and supplying, customers with advertisements or advertising matter containing statements and representations to the effect that said products are being offered for sale at greatly reduced prices, when such is not the fact; and selling or supplying its customers with its products stamped, branded, or otherwise marked with any false, fictitious, or misleading price known to be in excess of the price at which said products are intended to be and usually are sold at retail.

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. (Nov. 9, 1932.)

988. **False and Misleading Brands or Labels, Prices and Advertising—Cosmetics, Jewelry, and Novelties.**—Respondent, an individual, trading as a corporation, engaged in the sale and distribution in interstate commerce of a variety of merchandise, including cosmetics, jewelry, and novelties to agents and house-to-house canvassers, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist 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 his advertisements and advertising matter distributed in interstate commerce of alleged list or other prices purporting to be the prices at which his products are sold, or are intended to be sold, when such is not the fact; the use in his advertisements or advertising matter distributed in interstate commerce of any statements or representations concerning alleged list or other prices or values of his products so as to import or imply, or which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that such prices or values are the prices at which said products or any of them were or are sold in the usual course of retail trade, when such is not the fact; the use in his advertisements or advertising matter distributed in interstate commerce of the words "France" or "Paree" or either of them to describe and designate products not manufactured in or imported from France or Paris; and from the use of the words "France" and/or "Paree" in any way which may have the tendency or effect

to confuse, mislead, or deceive purchasers into the belief that the products so designated and described were manufactured in or imported from France, or Paris, when such is not the fact; the use in advertisements or advertising matter, or as a mark or label on his products or the cartons in which his products are packed, of the words "pearl" or "pearls" either independently or in connection or conjunction with any other word or words, so as to import or imply, 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 are pearls, when such is not the fact; unless, when the word "pearl" or "pearls" is used to designate or describe any of such products, such designating word shall be accompanied by the word "imitation" or some other word or words printed in type equally as conspicuous as that in which the said designating word is printed so as clearly to indicate that said products are not genuine pearls; the use in advertisements and advertising matter, or as a mark or label on his products or the cartons in which the same are packed, of the word "indestructible" in any way so as to import or imply that said products are indestructible, when such is not the fact; the use of the words "silk" and/or "chiffon" to designate or describe products not containing silk, product of the cocoon of the silk worm; and from the use of the words "silk" and/or "chiffon" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so designated or described are made of silk, the product of the cocoon of the silk worm, 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. (Nov. 9, 1932.)

**989. False and Misleading Advertising—Treatment for Stomach Ailments.**—Respondent, a corporation, engaged in the sale and distribution of an alleged treatment for stomach ailments 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 any and all statements and representations in its advertisements and 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 its said product will heal or cure ulcers or that it will quickly and surely correct stomach troubles, such as stomach ulcers, acidosis or kindred disorders, when

such is not the fact. The said corporation also agreed to cease and desist from the use of statements and representations in its said advertisements and advertising matter which may have the capacity or tendency to confuse, mislead, or deceive purchasers as to the therapeutic value of said product and the results 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. (Nov. 9, 1932.)

**990. False and Misleading Brands or Labels, Trade Name and Advertising—Proprietary Medicine.**—Respondent, an individual, engaged in the manufacture, sale and distribution of a proprietary 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, 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 distributed in interstate commerce of statements and representations to the effect that his said product will cure, or that it is an effective remedy for bronchitis, coughs, colds, hay fever, and other ailments of respiratory organs; and from the use of any such statements in any way which may have the tendency or effect to confuse, mislead or deceive purchasers into the belief that said product will cure, or is an effective remedy for them or any of them; from the use of the word "relief" as a part of the trade name under which said product is sold and distributed in interstate commerce in advertisements or advertising matter, and on labels affixed to the containers of such 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. (Nov. 16, 1932.)

**991. False and Misleading Advertising—Coupons, Advertising Matter, and Silverplated Ware.**—Respondent, a corporation 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 goods and in the redemption of such coupons by exchanging therefor various articles of silverplated ware, and in competition with various 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 or representing, directly or indirectly, in advertisements or advertising matter or otherwise that the silverware secured by dealers' customers is free, or costs them nothing, 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. (Nov. 16, 1932.)

**992. False and Misleading Advertising—Animal Remedy.**—Respondents, copartners, engaged in the sale and distribution of an alleged remedy for animals in interstate commerce, 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.

Respondent, in soliciting the sale of and selling their products 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 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 effective as a cure or treatment for, or will prevent, worms or distemper or disease in animals, when such is not the fact. Respondents also agreed to cease and desist from the use of statements and representations concerning the therapy or medicinal properties or values of said product which are in excess of what can be accomplished by the use of said product, and from the use of statements and representations which do not truthfully represent and describe the capabilities of said product or the results obtained from the use of said product.

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. (Nov. 16, 1932.)

**993. False and Misleading Brands or Labels and Advertising—Refrigerators.**—Respondents, corporations, engaged in manufacturing and selling refrigerators 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.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the words "all steel" and/or "all metal" in their advertisements or advertising matter distributed in interstate commerce, or on plates

attached to said products; and from the use of the words "steel" and/or "metal" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said products are constructed in their entirety of steel or of metal, when such is not the fact.

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. (Nov. 21, 1932.)

994. **Misrepresenting Product—Fish.**—Respondent, a corporation, engaged in the catching, curing, and packing of fish 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 words "lemon sole" to describe or designate a product made of a fish other than *glyptocephalus cynoglossus*; and from the use of the words "red snapper" to describe or designate a fish other than *lutianus campechanus*; and from the use of the word "sable" to describe and designate a fish other than *anoploma fimbria*; and from the use of the words "ocean catfish" to describe and designate a fish other than the sea catfish (*galeighthys felis*) or the channel catfish (*ictalurus punctatus*); and from the use of the words "lemon sole", "red snapper", "sable", or "catfish" or any of them either independently or in connection or conjunction with any other word or words, in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers respecting the variety of the product referred to.

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. (Nov. 21, 1932.)

995. **False and Misleading Brands or Labels and Advertising—Malt Syrup Products.**—Respondents, engaged in the sale and distribution in interstate commerce of malt syrup products, 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) offering for sale or selling in interstate commerce any malt syrup or malt

syrup product in cans or containers bearing a representation of the German Iron Cross either independently or in connection or conjunction with the words "Gott mit uns" or "imported hop flavor" or the words "one hundred percent hop flavored" or the word "imported" or the abbreviation "imp.," or any other word or words signifying, suggesting or implying either that the product in connection with which the same appears is imported, or is a product flavored with imported hops, when such is not the fact; (b) using in advertisements or on the cans or containers in which any product made in the United States entirely of domestic materials and offered for sale or sold in interstate commerce any word or words of German significance as a trade name or brand for designating such product, either independently or in connection or conjunction with any pictorial representation or illustration of German, Dutch, or other foreign scenes, or of individuals in foreign dress or costume, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product referred to is imported, or is a product flavored with imported hops, 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 it in the trial of the complaint which the Commission may issue. (Nov. 21, 1932.)

**996. False and Misleading Brands on Labels—Canned Tomato Paste.**—Respondents, copartners, engaged in the sale and distribution in interstate commerce of 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 product in interstate commerce, agreed to cease and desist forever from the use in their brands and labels of pictorial representations of Italian plum-shaped tomatoes, either independently or in connection or conjunction with any word or words in the Italian language so as to confuse, mislead, or deceive purchasers into the belief that the product in the containers on which such labels appear are made of Italian plum-shaped tomatoes, or packed in Italy, 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. (Nov. 21, 1932.)

**997. False and Misleading Brands or Labels—Hardware and Mechanics' Tools.**—Respondents, copartners, engaged in the importation of hardware and mechanics' tools 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 offering for sale, selling or distributing in interstate commerce pliers marked, stamped or branded with the words and figures "5,000 volts", unless the same are so constructed and insulated as actually to withstand heavy charges of electricity and to be safe for use in cutting wires carrying a charge or current of 5,000 volts.

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. (Nov. 21, 1932.)

**998. False and Misleading Brands or Labels and Advertising—Shoe Strings.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of shoe strings, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist 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 "silk" as a brand or label for said product; and from the use of the word "silk" on letterheads, labels, bands, or cartons in any way that may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the product so marked, branded, labeled, and represented is made in whole or in part 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. (Nov. 23, 1932.)

**999. False and Misleading Advertising—Preparation in Tablet Form.**—Respondent, a corporation, engaged in the sale and distribution of a preparation in tablet form in interstate commerce, 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, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter having interstate circulation of any and all statements and representations which may have the capacity and tendency to confuse, mislead, and deceive purchasers.

into the belief that the said product contains, possesses, or has therapeutic value in excess of what is actually the case, or that the said product is or constitutes an effective treatment, cure, or relief for and correction of stomach disorders such as all ulcers of the stomach, 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. (Nov. 23, 1932.)

**1000. False and Misleading Brands or Labels, Trade Name, and Advertising—Hair Restorative Preparation.**—Respondents, corporations, engaged in the manufacture, sale, and distribution in interstate commerce of a hair restorative preparation, 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.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of any and all statements and representations on labels affixed to said product, or in advertisements or advertising matter distributed in interstate commerce so as to import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the said product will restore hair which has turned gray to its original natural color or radiance, or that said product will nourish the hair roots which have been starved, or that it has a tonic action on the scalp or the hair roots, or will stop or prevent dandruff or falling hair, or that it will banish white hair except in the sense that it will dye the hair, or that it is entirely free from any harmful effects whatsoever either to the hair or to the scalp, when such are not the facts. The said corporations also agreed to cease and desist from the use of the words "pine needle", either independently or in connection or conjunction with any other word or words, as a trade designation for their shampoo so as to import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said shampoo is made or compounded from pine needles, 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. (Dec. 2, 1932.)

**1001. False and Misleading Corporate Name, Brands or Labels and Advertising—Paints.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of paints, and in competition with other corporations, individuals, firms and partner-



ships 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 "manufacturing" as part of its trade or corporate name, and in its advertisements and advertising matter, and on labels, letterheads and other stationery circulated in interstate commerce; and from the use of the word "manufacturing" in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said corporation owns, operates or controls a mill or factory wherein the products which it sells and distributes in interstate commerce are manufactured or fabricated, 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. (Dec. 2, 1932.)

**1002. False and Misleading Corporate Name, Brands or Labels and Advertising—Paints and Varnishes.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of paints and varnishes 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 "manufacturing" as part of its corporate or trade name, and from the use of the word "manufacturing" either alone or in connection or conjunction with any other word or words, or in any way which may have the tendency or capacity to confuse, mislead or deceive purchasers into the belief that it owns, controls or operates a mill or factory wherein the products which it sells are manufactured, 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. (Dec. 7, 1932.)

**1003. False and Misleading Advertising—Animal Remedy.**—Respondent, a corporation, engaged in the sale and distribution of an alleged remedy for animals such as foxes, goats and dogs 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 in its advertisements and advertising matter, or in any other way of any and all statements and representations 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 effective as a cure or treatment for, or will prevent worms or distemper or disease in animals, when such is not the fact. Respondent also agreed to cease and desist from the use of statements and representations concerning the therapy or medicinal properties or values of said product which are in excess of what can be accomplished by the use of said product, and from the use of statements and representations which do not truthfully represent and describe the capabilities of said product or the results obtained from the use of said product.

Respondent also agreed that if it 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 it in the trial of the complaint which the Commission may issue. (Dec. 14, 1932.)

**1004. False and Misleading Brands or Labels and 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 or advertising matter, or on labels, bands, stickers, or otherwise of the words "Vuelta Abajo", to represent or designate his 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, or in the province of Vuelta Abajo thereof, when such is not the fact.

Respondent also agreed that if he 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 him in the trial of the complaint which the Commission may issue. (Dec. 16, 1932.)

**1005. False and Misleading Advertising—Razor-Blade Sharpener.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of a razor-blade sharpener, 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 in its advertisements and advertising matter distributed in interstate commerce of such statements and representations as "European machines" or "From the Old World to the New" either independently or in connection or conjunction with the words "Copenhagen, Denmark; Leicester, England; Hamburg, Germany" 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 made or manufactured in Europe or abroad and imported into the United States, when such is not the fact.

Respondent also agreed that if it 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 it in the trial of the complaint which the Commission may issue. (Dec. 16, 1932.)

**1006. False and Misleading Brands or Labels, Trade Name and Advertising—Cigars.**—Respondent, a corporation, engaged in the manufacture, sale, and distribution of cigars 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 words "throw-outs" either independently or in connection or conjunction with any other word or words as a trade name or brand for its products, on its labels or in its advertisements or advertising matter distributed in interstate commerce to describe or designate products which are not actually throw-outs; and from stating and representing, directly or through its salesmen and agents that its products are throw-outs, when such is not the fact; the use on labels or in advertisements or advertising matter circulated in interstate commerce of the words and figures "now 2 for 5 cents", or any similar phrase or statement of equivalent meaning to describe and designate products regularly and usually sold and offered to be sold at the price so marked, and from the use on labels and in advertisements and advertising matter circulated in interstate commerce of any other statements or representations which have the capacity or tendency to confuse, mislead, or deceive purchasers, into the belief that the prices of the products referred to have been reduced, when such is not the fact; the use on labels or in advertisements or advertising matter circulated in interstate commerce of the words and figures "10¢ and up sizes", "off color and shapes" or any similar phrase or statement of equivalent meaning which may have the capacity or tendency to

confuse, mislead, or deceive purchasers into the belief that the products referred to are of the quality usually and regularly sold for 10 cents each, when such is not the fact.

Respondent also agreed that if it 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 it in the trial of the complaint which the Commission may issue. (Dec. 16, 1932.)

1007. **False and Misleading Advertising—Metal Specialties.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of metal specialties including ash trays, platters, tankards, cigarette boxes and cocktail shakers, 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 circulated in interstate commerce of the words "precious metal" to represent and describe said product either independently or in connection or conjunction with the word platinum, or with any other word or words so as to import or imply that the said metal of which said products are made is of special or unusual value; and from the use of the words "precious metal" or any words of similar meaning in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that the products referred to are made of any rare or precious metal, 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. (Dec. 16, 1932.)

1008. **False and Misleading Advertising—Refrigerators.**—Respondent, a corporation engaged in the manufacture, sale, and distribution of refrigerators 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 representing its refrigerators as "all steel" in its advertisements and advertising matter distributed in interstate commerce; and from the use of the word "steel" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said products are constructed in their entirety of steel, or of metal, 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. (Dec. 16, 1932.)

**1009. False and Misleading Brands or Labels and Advertising—Malt Syrup.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of a malt syrup, 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 words "duo-malt" either independently or in connection or conjunction with any other word or words, or in any way as a trade designation for its said product, or on its labels affixed to said product, or as descriptive of said product in 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 was made or prepared by a Duo or double malting process. The said corporation also agreed to cease and desist from the use in its said advertisements and advertising matter of such words and statements as "new duo malting process" or "a special process" or "new duo-malting process which retains strength and flavor that is lost by ordinary malting methods", 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 process by which the said product is made or manufactured is either a new or a special process for the production of malt syrups which is peculiar to and exclusive with respondent, when such is not the fact. The said corporation also agreed to cease and desist from the use in its said advertisements and advertising matter of any and all words, statements, and pictorial or other representations which may have the capacity or tendency to mislead or deceive purchasers into the belief that said corporation owns, operates, and controls the plant or factory wherein is made or manufactured the product which it sells and distributes 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. (Dec. 16, 1932.)

**1010. Maintaining Resale Prices—Pneumatic Tools and Road Machinery.**—Sullivan Machinery Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its factories in Claremont,

N.H., and Michigan City, Ind., and principal place of business located at the city of Chicago, in the State of Illinois. It is now and for more than 1 year last past has been engaged in the manufacture of pneumatic tools and road machinery, and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped from its factories or warehouse 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 its business, Sullivan Machinery Co. is and 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 as described in paragraph 1 hereof, Sullivan Machinery Co. caused its products to be sold and distributed among users thereof located in various States of the United States, such sales being effected chiefly through dealer agents, each of whom sold in a restricted territory. In the course of its business said Sullivan Machinery Co. adopted a system providing for the cooperation of the said trade in the maintenance and enforcement of prices established by it at which its products should be sold to users thereof. Said company caused it to be generally known that it would require its customers to maintain and observe the retail prices established or suggested by it; and as a means of effecting the carrying out of its said system said company caused the following provision to be inserted in and to form part of its contracts with its agents:

The principal agrees to furnish the distributor with the principal's price lists, and the distributor agrees that all sales shall be made in accordance with such price lists and with the established policy and practices of the Sullivan Machinery Co.

with the result that the prices at which said products were sold were uniform and consistent with the aforesaid agreement.

*It is further stipulated and agreed* by and between the said William E. Humphrey, Chairman of the Federal Trade Commission, and Sullivan Machinery Co., that said Sullivan Machinery Co. hereby agrees in soliciting the sale of and selling its products in interstate commerce, to cease and desist forever from the use of the following cooperative methods, or any of them; seeking or securing from the retail or other trade, agreements, promises, or assurances of cooperation with said corporation in the maintenance of any system of resale prices whatsoever; including in its contracts with agents any promise or agreement to maintain the retail prices established or suggested by it for the resale of its products; directly or indirectly establishing or carrying into effect by cooperative methods any system whatsoever for the maintenance of resale prices on its products by its distributors.

*It is also stipulated and agreed* that if the said Sullivan Machinery Co. 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 it in the trial of the complaint which the Commission may issue.

*It is also understood 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. (Dec. 16, 1932.)

**1011. Maintaining Resale Prices—Pneumatic Tools and Road Machinery.**—Chicago Pneumatic Tool Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located at the city of New York, in the State of New York. It is now and for more than one year last past has been engaged in the manufacture of rock drills, paving breakers, pneumatic tools, and air compressors, and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped from its factory or warehouse to purchasers thereof located in a State or States of the United States other than the State from which shipped. In the course and conduct of its business, Chicago Pneumatic Tool Co. is and 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 as described in paragraph 1 hereof, Chicago Pneumatic Tool Co. caused its products to be sold and distributed among users thereof located in various States of the United States, such sales being effected chiefly through dealer distributors, each of whom sold in a restricted territory. In the course of its business, said Chicago Pneumatic Tool Co. adopted a system providing for the cooperation of the said trade in the maintenance and enforcement of prices established by it at which its products should be sold to users thereof. Said company caused it to be generally known that it would require its dealer distributors to maintain and observe the retail prices established or suggested by it; and as a means of effecting the carrying out of its said system said company caused the following provisions to be inserted in and to form part of its contracts with its distributors:

The company appoints the dealer and the dealer agrees to sell the company's products and to quote the company's standard prices.

In another form of contract the following provision appeared:

In consideration of the terms accorded the dealer by the provisions of this contract the dealer agrees not to sell or offer for sale \* \* \* any of the company's products at less than the company's net users' prices in effect at the time of such sale or offer.

with the result that the prices at which said products were sold were uniform and consistent with the aforesaid agreement.

*It is further stipulated and agreed*, by and between the said William E. Humphrey, chairman of the Federal Trade Commission, and Chicago Pneumatic Tool Co., that said Chicago Pneumatic Tool Co. hereby agrees in soliciting the sale of and selling its products in interstate commerce to cease and desist forever from the use of the following cooperative methods, or any of them: Seeking or securing from the retail or other trade, agreements, promises or assurances of cooperation with said corporation in the maintenance of any system of resale prices whatsoever; including in its contracts with its agents any promise or agreement to maintain the retail prices established or suggested by it for the resale of its products; directly or indirectly establishing or carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices on its products by its distributors.

*It is also understood and agreed*, by and on behalf of the Commission, that this said 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. (Dec. 16, 1932.)

**1012. Maintaining Resale Prices—Pneumatic Tools and Road Machinery.**—The Cleveland Rock Drill Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located at the city of Cleveland, in the State of Ohio. It is now and for more than one year last past has been engaged in the manufacture of pneumatic tools, and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products when sold to be shipped from its factory or warehouse in the State of Ohio to purchasers thereof located in a State or States of the United States other than the State of Ohio. In the course and conduct of its business, the Cleveland Rock Drill Co. is and 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 as described in paragraph 1 hereof, the Cleveland Rock Drill Co. caused its products to be sold



and distributed among users thereof located in various States of the United States, such sales being effected chiefly through dealer agents, each of whom sold in a restricted territory. In the course of its business said the Cleveland Rock Drill Co. adopted a system providing for the cooperation of the said trade in the maintenance and enforcement of prices established by it at which its products should be sold to users thereof. Said company caused it to be generally known that it would require its customers to maintain and observe the retail prices established or suggested by it; and as a means of effecting the carrying out of its said system said company caused the following provision to be inserted in and to form part of its contracts with its agents:

Distributor agrees at all times, and on all bids to quote manufacturer's list price on tools and equipment. Failure to do this—or in other words, cutting of manufacturer's selling price or the granting of cash discounts will give the manufacturer the right to cancel this contract. \* \* \*

This agreement \* \* \* will automatically be cancelled if the distributor bids on, quotes, or sells Cleveland products at less than manufacturer's net list prices.

with the result that the prices at which said products were sold were uniform and consistent with the aforesaid agreement.

*It is hereby stipulated and agreed*, by and between the said William E. Humphrey, chairman of the Federal Trade Commission, and the Cleveland Rock Drill Co., that said the Cleveland Rock Drill Co. hereby agrees, in soliciting the sale of and selling its products in interstate commerce, to cease and desist forever from the use of the following cooperative methods, or any of them: Seeking or securing from the retail or other trade, agreements, promises or assurances of cooperation with said corporation in the maintenance of any system of resale prices whatsoever; including in its contracts with its distributors any promise or agreement to maintain the retail prices established or suggested by it for the resale of its products; directly or indirectly establishing or carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices on its products by its distributors.

*It is also understood 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. (Dec. 16, 1932.)

1013. **Maintaining Resale Prices—Pneumatic Tools and Road Machinery.**—Independent Pneumatic Tool Co. is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Delaware, with its factory at Aurora, Ill., and principal place of business located at the city of Chicago, in the State of Illinois. It is now and for more than 1 year last past has been engaged in the manufacture of pneumatic drills, hammers, and other pneumatic tools, and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped from its factory, or warehouse 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 its business Independent Pneumatic Tool Co. is and 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 Independent Pneumatic Tool Co. caused its products to be sold and distributed among users thereof located in various States of the United States, such sales being effected partly through agents and dealers, each of whom sold in a restricted territory. In the course of its business said Independent Pneumatic Tool Co. adopted a system providing for the cooperation of the said trade in the maintenance and enforcement of prices established by it. Said company caused it to be generally known through its contracts that it would require its dealers and agents to maintain and observe the resale prices established or suggested by it; and as a means of effecting the carrying out of said system said company caused the following provision to be inserted in and to form part of its contracts with its agents and dealers: -

It is further understood and agreed that the party of the first part shall have the right to decline execution of any order received from the party of the second part if such order specifies a price or terms of payment other than as herein provided for \* \* \*.

with the result that the prices at which said products were sold were uniform and consistent with the aforesaid agreement.

*It is further stipulated and agreed*, by and between the said William E. Humphrey, Chairman of the Federal Trade Commission, and Independent Pneumatic Tool Co., that said Independent Pneumatic Tool Co. hereby agrees, in soliciting the sale of and selling its products in interstate commerce, to cease and desist forever from the use of the following cooperative methods, or any of them: Seeking or securing from the retail or other trade, agreements, promises, or assurances of cooperation with said corporation in the maintenance of any system of resale prices whatsoever; including in its contracts with its agents any promise or agreement to maintain the retail prices established or suggested by it for the resale of its products; directly or indirectly establishing or carrying into effect, by cooperative methods, any

system whatsoever for the maintenance of resale prices on its products by its distributors.

*It is also understood 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. (Dec. 16, 1932.)*

**1014. Misrepresenting Business Status and Prices—Flavoring Extracts.**—Respondent, an individual, engaged in the manufacture or compounding of flavoring extracts 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 from advertising or in any way marking his products with fictitious and exaggerated prices and from making any false, fictitious, or misleading statements or representations concerning the value or prices at which said products, or any of them, are sold or are intended to be sold in the usual course of trade. The said respondent also agreed to cease and desist from the use in his advertisements or advertising matter distributed in interstate commerce of the pictorial representation of a building together with any verbal representation or representations so as to import or imply that the said building is occupied and used by the said respondent in the manufacturing or compounding of his said products, when such is not the fact.

Respondent also agreed that if he 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 him in the trial of the complaint which the Commission may issue. (Dec. 16, 1932.)

**1015. False and Misleading Brands or Labels and Trade Names—Art Needle Work Materials, Rug Foundations, and Yarns.**—Respondent, a corporation, engaged in the manufacture of art needlework materials including rug foundations (consisting of a piece of canvas or burlap with a pattern stamped upon it) and of yarns for use in the manufacture at home of rugs on such foundations in accordance with the patterns stamped thereon, 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 "Orienta" or "Oriental" in any trade name or brand to describe or designate products not made in or imported from any oriental country; and from the use of such words as "Orienta" or "Oriental" either alone or in connection with any other word or words or in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that such products are made in or imported from any oriental country, when such is not the fact; the use of the word "wool" in any trade name or brand to describe or designate products not made wholly of wool; and from the use of said word "wool" either alone or in connection 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 to which the same is applied are composed wholly of wool, when such is not the fact unless, when said products are 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 in type equally as conspicuous as the word "wool" is printed so as to indicate clearly that the said products are not composed wholly of wool, or that will otherwise properly and accurately describe said product; the use of ambiguous representations which do not clearly define the materials of which such products are composed in respect of their wool and/or rayon content; and from the use of the words "imported Hessian canvas" or any other similar words or expressions which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is anything different from, or superior to the product known to the trade as "Hessian cloth" and to the public as "burlap" when such is not the fact.

Respondent also agreed that if it 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 it in the trial of the complaint which the Commission may issue. (Jan. 16, 1933.)

1016. **False and Misleading Advertising—Battery Compound.**—Respondent, a corporation, engaged in the sale and distribution of an alleged battery compound 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 practices as set forth therein.

Respondent, in soliciting the sale of and selling its said product in interstate commerce agreed to cease and desist from the use in advertisements and advertising matter of statements and representations that the said product will end battery troubles, or that it will preserve or lengthen the life of new batteries, give new life to or rejuvenate or prolong the life of old batteries, or that it will preserve plates or

insulators, prevent over-charging or crystallization and hardening of plates, 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. (Jan. 16, 1933.)

**1017. False and Misleading Corporate Name and Advertising—Shoes.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of shoes 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 in advertisements and advertising matter and on letterheads and other stationery of statements and representations to the effect that it owns, operates, or controls any factory or factories wherein the product which it sells and distributes in interstate commerce are manufactured when such is not the fact; and from the use of any such statements and representations alone or in connection with pictorial representations of factory buildings in any way which may have the tendency and effect to confuse, mislead, or deceive purchasers into the belief that it owns, controls, or operates any factory or factories wherein the products which it sells and distributes in interstate commerce are manufactured, when such is not the fact; the use of the word "incorporated" on letterhead or other stationery, or in any other way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that it is incorporated under the name of Consolidated Shoe Co., 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. (Jan. 16, 1933.)

**1018. False and Misleading Brands or Labels, Trade Name and Advertising—Cigars.**—Respondent, a corporation, engaged in the manufacture of cigars 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 forever from the use of the words "throw-outs" or "factory throw-outs" either independently or in connection or conjunction with any other word or words as a trade name or brand for its products, or in its labels distributed in interstate commerce to describe or designate products which are not

actually throw-outs, and from stating and representing directly or indirectly that its said products are throw-outs when such is not the fact; the use on labels or other advertisements or advertising matter circulated in interstate commerce of the words and figures "now 2 for 5¢", or any other similar phrase or statement of equivalent meaning to describe and designate products usually and regularly sold and offered to be sold at the price so marked; and from the use on labels or other advertisements or advertising matter circulated in interstate commerce of any other statements or representations which have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been reduced, when such is not the fact; the use on labels or other advertisements or advertising matter circulated in interstate commerce of the words and figures "10¢ and 2 for 25¢ sizes", "off colors and shapes", or any other similar phrase or statement of equivalent meaning, which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products referred to are of the quality usually and regularly sold for 10 cents each, or 2 for 25 cents, 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. (Jan. 16, 1933.)

1019. **False and Misleading Advertising—Fishing Tackle.**—Respondent, a corporation, engaged in the manufacture of sporting goods and fishing tackle 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 or advertising matter circulated in interstate commerce of the statement or representation that the alleged secret process which it uses in the manufacture of its rods gives said products 25 percent greater tensile strength than rods not so treated, or any other similar statement of representation indicating that its said products had any percentage of tensile strength greater than said products do in truth and in fact actually possess. The aforesaid respondent further agreed to discontinue any and all similar statements or representations concerning its products which are exaggerated and improbable of accomplishment.

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. (Jan. 16, 1933.)

**1020. False and Misleading Advertising—Correspondence Courses.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of correspondence courses of instruction to prepare applicants for positions under the United States Civil Service, 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 courses of instruction in interstate commerce, agreed to cease and desist either independently and/or through his agents or solicitors, from the use of any and all statements and representations which may have the capacity or tendency to mislead or deceive students or prospective students into the belief that examinations in the various branches or in any branch of the United States Civil Service will be given at an early date, or that examinations are now being held frequently or a stated number of times a year, or that it is easy to obtain a position under the United States Civil Service after completing the course of study prescribed by respondent, or that an appointment under the United States Civil Service is certain, or that respondent is affiliated or connected with, or sanctioned by the United States Civil Service Commission, or that the number of jobs under the said Service are equally available now as formerly, when such are not the facts. Respondent also agreed to cease and desist either independently and/or through his agents or solicitors from the use of the words "help wanted" as classified insertions in newspaper advertising matter when the purpose for which said words are used is that of an offer to sell instruction and is not a medium to bring together employer and employee. Respondent also agreed to cease and desist either independently and/or through his agents or solicitors from the use of the words "help wanted" so as to import or imply that there are positions open or available through the United States Civil Service, when such is not the fact, and from any other similar representations or statements which may have the capacity or tendency to mislead or deceive purchasers or prospective purchasers of said courses of instruction into the belief that there are positions now available with the United States Government, 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. (Jan. 16, 1933.)

**1021. False and Misleading Brands or Labels and Advertising—Cigars.**—Respondent, an individual, engaged in the sale and distri-

bution in interstate commerce of cigars, 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 words "throw-outs" either independently or in connection or conjunction with any other word or words as a trade name or brand for his products, or on labels or other advertisements or advertising matter distributed in interstate commerce to describe or designate products which are not actually throw-outs; and from stating and representing, directly or indirectly, that his products are throw-outs or factory throw-outs, when such is not the fact; the use on labels or in other advertisements or advertising matter circulated in interstate commerce of the words and figures "5¢-10¢ and 2 for 25¢ sizes", "off color or shapes" or any similar phrase or statement of equivalent meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products referred to are of the quality usually and regularly sold for 5 cents or for 10 cents each, or at the rate of 2 for 25 cents, 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. (Jan. 16, 1933.)

**1022. False and Misleading Advertising—Poultry Remedy.—**

Respondents, engaged in the manufacture, sale, and distribution of an alleged poultry remedy in interstate commerce, and in competition with other individuals, firms, and 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.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in their advertisements and advertising matter, or in any other way of any and all statements and representations 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 cure for coccidiosis of poultry, when such is not the fact. The said respondent also agreed to cease and desist from the use of any and all statements or representations concerning the medicinal properties or value of said product which are in excess of what can be accomplished by the use of the said product, and from the use of any and all statements and representations which do not truthfully represent and describe the product offered by them for sale in interstate commerce, or the results which may be obtained from the use of said product.



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. (Jan. 16, 1933.)

**1023. False and Misleading Brands or Labels and Advertising—Boy's Garment and a Pocketknife.**—Respondent, an individual, engaged in selling and distributing in interstate commerce a boy's garment and a pocketknife, 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 on his labels affixed to garments sold and distributed by him in interstate commerce, or in advertisements or other printed matter circulated or distributed between and among various States of the United States of the following representations "Lucky Boy! Scout Short With The Scout Knife Pocket" and/or "Monarch Lucky Boy Scout Short Knife FREE With Every one of these Lucky Boy Shorts at 95¢" either independently or in connection or conjunction with any other representation or representations so as to import or imply that the said product is the official equipment of the well-known organization known as the "Boy Scouts of America." The said respondent, in soliciting the sale of and selling his products in interstate commerce also agreed to cease and desist from the use in his advertisements and other printed matter of the word "Scout", in any way so as to mislead, confuse, or deceive the purchaser, and the use of the word "Scout" in connection or conjunction with any other word or words, pictorial representation, or representations which may have the capacity or tendency to confuse, mislead, or deceive the purchaser into the belief that the said products or either of them are or is the official equipment of the well-known and recognized "Boy Scouts of America" organization and/or that respondent has been and is now authorized by the said organization to advertise, sell, or distribute his said products, or either of them as official equipment of the said organization, 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. (Jan. 18, 1933.)

**1024. False and Misleading Testimonials and Advertising—Hosiery and Wearing Apparel.**—Respondent, a corporation, engaged in the manufacture, sale, and distribution of hosiery and other apparel 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 in its advertisements and advertising matter distributed in interstate commerce of statements either independently or in connection, conjunction, or combination with photographs or pictorial representations of, or concerning or referring to persons so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the persons so photographed or represented and to whom the said statements refer are disconnected or disassociated with the said corporation and are not "paid" employees of, or persons receiving compensation from said corporation, or are not retained as members of its staff; unless, when said advertisements and advertising matter shall contain such statements and photographs or pictorial representations of, or referring to persons employed by or receiving compensation from said corporation, in which case said statements and photographs or pictorial representations shall be immediately accompanied by a statement or statements to the effect that the said persons are employees of and/or receiving compensation from the said corporation, or are retained as members of its staff, or that will indicate clearly that such persons are not disinterested and/or unconnected or disassociated with said corporation.

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. (Jan. 28, 1933.)

**1025. False and Misleading Advertising—Fabrics for Women's Shoes.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of fabrics used in the manufacture of women's shoes, 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 "manufacturers" on letterheads or other printed matter circulated in interstate commerce and from the use of the word "manufacturers" or any other word of similar meaning, in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said respondent is the manufacturer of the products which it sells and distributes 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. (Feb. 3, 1933.)

1026. **False and Misleading Advertising—Dental Amalgam Alloys.**—Respondent, an individual, agreed on behalf of himself, his agents, representatives, servants, and employees, that in connection with the sale or offering for sale in interstate commerce of dental amalgam alloys, he would not directly or indirectly represent in any manner whatsoever that any of his said dental amalgam alloys offered for sale and sold are of the same characteristics, quality, and kind as any offered for sale by any of his competitors, unless and until such dental amalgam alloys so represented as being the same in truth and in fact contain the same definite parts by weight, the same proportions of the same physical ingredients, and actually do possess the same characteristics and quality as that of the particular competitive dental amalgam alloys with which it is being so compared. (Feb. 6, 1933.)

1027. **False and Misleading Brands or Labels—Paints, Shellac, and Putty.**—Respondent, a corporation, engaged in the manufacture, sale and distribution in interstate commerce of paints, shellac, and putty, 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 words "zinc-lead combination" or any other words of similar import on its brands or labels or otherwise to designate its said product unless the said product so branded, labeled or designated actually contains carbonate of lead or sulphate of lead as the lead ingredient and oxide of zinc as the zinc ingredient each in such substantial quantity so as to be properly and accurately represented, designated and referred to as "zinc-lead combination."

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. (Feb. 8, 1933.)

1028. **False and Misleading Use of Samples—Linoleum.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of window shades and floor coverings, 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 exhibiting to customers and prospective customers, samples of linoleum different from and

inferior to those which he intends to use, and uses, in filling the resulting contracts; stating and representing to customers and prospective customers that he intends to, and will, use a grade of linoleum in filling his contracts, superior to and of substantially higher cost than the linoleum which he intends to use and actually uses; substituting for the linoleum which he has stated and represented to customers and prospective customers would be used in filling his contracts, linoleum of an inferior grade and of substantially lower cost; removing from the backs of any linoleum which he uses the words "mill ends" or any other words or legends placed thereon for the protection of the purchasing public, with the purpose and effect to mislead and deceive such purchasers in respect of the trade or value of such linoleums.

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. (Feb. 17, 1933.)

**1029. False and Misleading Advertising—Automobile Parts, Accessories, Beverage Sets, etc.**—Respondent, a corporation, engaged in the manufacture of automobile parts and accessories and of gift articles including clock frames, vases, frames for photographs, coaster and beverage sets, paper weights, bottle stoppers and cigarette boxes, 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 the words "silver" and/or "silver alloy" either independently or in connection or conjunction with any other word or words so as to import or imply that the material out of which its products are fabricated is composed of silver or in substantial part of silver, or is a silver alloy, when such is not the fact; and from the use of the words "silver" and/or "silver alloy" or either of them in any way which may have the tendency and capacity to confuse, mislead or deceive purchasers into the belief that its products are fabricated from silver or a material composed in substantial part of silver, or from silver alloy, 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. (Feb. 17, 1933.)

**1030. False and Misleading Advertising—Product for Improving Acoustic Properties of Interiors.**—Respondent, a corporation, engaged

in business as thermal engineers and contractors, and particularly in the manufacture of a product for use in improving the acoustic properties of interiors, and in the sale and distribution in interstate commerce of said product, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following unfair methods of competition as set forth therein.

Respondent hereby agrees to cease and desist forever from making or circulating in interstate commerce any purported reproduction or reproductions, copy or copies of any letter received by it from the Bureau of Standards in the Department of Commerce of the United States Government, which does not correctly, accurately, and fully reproduce and represent the actual contents of such letter, and the whole thereof.

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. (Feb. 17, 1933.)

**1031. False and Misleading Advertising—Food Flavors.**—Respondent, an individual, engaged in the manufacture of food flavors and in the sale and distribution in interstate commerce of said product, and in competition with other individuals, corporations, 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, hereby agrees to cease and desist forever from the use in advertisements or advertising matter distributed in interstate commerce of false and exaggerated statements and representations respecting the price or selling value of his products, or of other similar 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. (Feb. 23, 1933.)

**1032. False and Misleading Business Status and Advertising—Rings.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of imitation jewelry, pens, pencils, and the like, and in competition with other individuals, corporations, 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 rings in interstate commerce, hereby agrees to cease and desist from the use in his advertisements and advertising matter distributed in interstate commerce of the word "diamond" either independently or in connection

or conjunction with any other word or words as descriptive of the said ring settings which may have the capacity or tendency to confuse, mislead, or deceive purchasers or prospective purchasers into the belief that the said rings are ornamented with diamonds when such is not the fact. The said respondent also agrees to cease and desist from the use in his advertisements or advertising matter or in otherwise soliciting the sale of and selling his merchandise in interstate commerce of the word "manufactured" either independently or in connection or conjunction 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 respondent is the manufacturer of the said merchandise or that he owns, operates, and controls the plant or factory wherein such merchandise is made or 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. (Feb. 23, 1933.)

**1033. False and Misleading Brands or Labels and Advertising—Tonic.**—Respondent, an individual, engaged in the manufacture, sale, and distribution of an alleged tonic, 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 from the use on labels affixed to the said product, or in advertising matter distributed in interstate commerce, of the words "Marca Italia Marcala" or the words "Italia" or "Marcala" either independently or in connection or conjunction each with the other, or with any other word or words, pictorial representation, insignia or the national colors of Italy 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 product manufactured in Marcala, Province of Sicily, Italy, or elsewhere in the said country and/or of ingredients obtained from said city, Province and Country. The said respondent also agreed to cease and desist from the use of the word "importers" in his said advertisements, or on the said labels 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 said product designated "Marcala Tonic" or "Italia Marcala" is imported from Italy or abroad, when such is not the fact. The said respondent also agreed to cease and desist from the use in connection with his said advertising matter, or his said labels of any alleged "Honors awarded to manufacturers" which may have the capacity or tendency to mislead or

deceive purchasers into the belief that the said "honors" have been awarded in connection with the product designated "Marcala Tonic" or "Italia Marcala" 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. (Mar. 6, 1933.)

**1034. False and Misleading Brands or Labels and Advertising—Beverages including Ginger ale.**—Respondent, a corporation, engaged in the manufacture of beverages, including ginger ale, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, 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 "Hull House", "London" and/or "Dublin", either independently or in connection or conjunction each with the others, or with the pictorial representation of the coat of arms of Great Britain, or any other way so as to import or imply that the said product is of foreign origin, when such is not the fact; the use of any pictorial representation of the coat of arms of Great Britain, either independently or in connection or conjunction with any word or words, as part of a brand or label affixed to a product so as to import or imply that the said product is manufactured in England or imported therefrom when such is not the fact; the use of any word or words, or of any pictorial representation, on its labels or other advertisements or advertising matter, in connection with the sale and distribution of its products in interstate commerce which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such products are manufactured in or imported from any foreign country, 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. (Mar. 6, 1933.)

**1035. False and Misleading Brands or Labels—Soaps.**—Respondent, an individual, engaged in the manufacture of soaps and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, corporations, 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, hereby agrees to cease and desist forever from marking, branding, stamping, imprinting, or labeling any of his products, or the containers in which the same are packed, with any false, fictitious, or misleading brands or labels relative to the value or selling price of the same.

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. (Mar. 6, 1933.)

**1036. False and Misleading Trade Name and Advertising—Stationery and Office Equipment and Supplies.**—Respondent, a corporation, engaged as jobber in the sale and distribution of stationery and office equipment and supplies 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, hereby agrees to cease and desist forever from (a) the use of the words "Rodgers Special Erasers" in catalogs or other advertisements or advertising matter, either alone or in connection or conjunction with the listing of genuine Joseph Rodgers & Sons, Ltd., products to describe or designate products not made by Joseph Rodgers & Sons, Ltd., of Sheffield; or unless, in case the word "Rodgers" is used in such catalogs or other advertising matter to designate and describe products other than those made by Joseph Rodgers & Sons, Ltd., such words shall be accompanied by other word or words, in type of equal size and conspicuousness, clearly and distinctly stating that such products are not the products of Joseph Rodgers & Sons, Ltd., of Sheffield, England; (b) the use of the word "Rodgers" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products to which said word is applied are the products of Joseph Rodgers & Sons, Ltd., of Sheffield, England, 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. (Mar. 10, 1933.)

**1037. False and Misleading Advertising—Product composed of Pine Needle Essence and Liquid Soap.**—Respondent, a corporation, engaged in the compounding of a product composed in part of imported pine needle essence and in part of liquid soap, and in the sale and distribution of the resulting product in interstate commerce and in competition with other corporations, individuals, firms, and partner-



ships, 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, hereby agrees to cease and desist forever from stating and representing, in advertisements and advertising matter circulated in interstate commerce, that its said product contains over 50 percent of imported pine needle essence, when such is not the fact; and from the making of exaggerated statements respecting the pine needle essence content of its said product, which may have the capacity or tendency to confuse, mislead, or deceive purchasers respecting the actual content thereof.

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. (Mar. 10, 1933.)

**1038. False and Misleading Trade or Corporate Name—Correspondence Course in Business.**—Respondent, a corporation, engaged in the sale in interstate commerce of courses of instruction in business methods by correspondence, also sells to pupils and prospective pupils, through the mails, printed or written lessons, instructions, charts, drawings, textbooks, and supplies to be used by pupils in connection with the course of lessons, and in competition with other corporations, individuals, firms, and partnerships, 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 courses of instruction, lessons, instruction books and papers in interstate commerce, hereby agrees to cease and desist forever from the use of the word "university" as part of its corporate or trade name under which it conducts its business.

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. (Mar. 15, 1933.)

**1039. False and Misleading Advertising—Seeds and Preparation for Dogs, Livestock, and Poultry.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of seeds and of various preparations for dogs, livestock, poultry, and the like, the said preparations including since September of 1931, a product for fur-bearing animals, horses, cattle, pigs, and poultry 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, hereby agrees to cease and desist from the use in its advertisements and advertising matter, or in any other way, of any and all statements and representations 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 effective as a cure or treatment for, or will prevent worms or distemper or disease in animals, when such is not the fact. The said corporation also agrees to cease and desist from the use of statements and representations concerning the therapy or medicinal properties or values of said product which are in excess of what can be accomplished by the use of said product, and from the use of statements and representations which do not truthfully represent and describe the capabilities of said product or the results obtained 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. (Mar. 15, 1933.)

**1040. False and Misleading Brands or Labels and Advertising—Cosmetics.**—Respondent, a corporation, engaged in the manufacture, sale, and distribution of cosmetics 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 said product in interstate commerce, agreed to cease and desist from the use on its labels affixed to its product, or in its advertising matter distributed in interstate commerce, of the statement or representation "a rich nourishing cream especially developed to smooth away wrinkles and keep the skin young and flexible" or of any other similar statement or representation 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 said product, when applied externally, will nourish the skin or keep away or eradicate lines and wrinkles and keep the skin young; when such are not 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. (Apr. 3, 1933.)

**1041. False and Misleading Brands or Labels and Trade Name—Beauty Preparations.**—Respondent, an individual, engaged in the sale and distribution of beauty preparations 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 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, or on labels affixed to products 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 a laboratory in which are made or compounded the products sold and distributed by her in interstate commerce.

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. (Apr. 5, 1933.)

1042. **False and Misleading Brands or Labels—Curtains, Draperies, and Novelty Accessories.**—Respondent, a corporation, engaged in the manufacture, sale, and distribution of shower-bath curtains, window draperies, and novelty accessories, 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 "Federal certified" in its labels or in any other 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 attached has been "certified" or has been endorsed or approved by the United States Government, or by any department, bureau, or officer thereof.

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. (Apr. 5, 1933.)

1043. **False and Misleading Brands or Labels, Trade Name and Advertising—Cutlery.**—Respondent, a corporation, engaged in the manufacture of cutlery, including scissors, shears, and penknives, 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 "English" as a trade name, stamp or brand for products not manufactured in England, and from the use of the word "English"

in advertisements or advertising matter circulated in interstate commerce to designate and describe products not made in England; and from the use of the word "English" in any other way which may have the capacity or tendency to confuse, mislead, or deceive customers into the belief that the products so referred to are manufactured in England, 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. (Apr. 24, 1933.)

1044. **False and Misleading Advertising—Imitation Pearls.**—Respondent, a corporation, engaged in the sale and distribution of a variety of merchandise, including imitation pearls, 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 or other printed matter of the word "Pearl" either independently or in connection or conjunction with any other word or words, so as to import or imply that the products so described and designated are made in whole or in part of pearls, when such is not the fact; and from the use of the word "pearl" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such products are made in whole or in part of natural or genuine pearls, 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. (Apr. 24, 1933.)

1045. **False and Misleading Brands or Labels—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery 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 hosiery in interstate commerce, agreed to cease and desist from the use of the words "pure thread silk reinforced with rayon", or the words "pure thread silk reinforced with art silk" as a brand or label for said hosiery or as representative or descriptive of a product not composed in substantial part of silk. The said corporation also agreed to cease and desist from the use of the word "silk" either independently or in connection or

conjunction with the word "art" or with any other word or words, or in any way as descriptive of its hosiery so as to import or imply that the said hosiery is composed of silk or in substantial part of silk, when such is not the fact. If the said hosiery 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 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 hosiery is not composed wholly of silk, and which will otherwise properly and accurately represent, define, and describe said hosiery so as to indicate clearly that the same is composed in part of a material or materials other than silk. The said corporation also agreed to cease and desist from the use of the words "art silk" to represent or describe a product which is not composed of silk, or to represent or designate a product simulating silk in appearance or texture.

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. (Apr. 24, 1933.)

**1046. False and Misleading Brands or Labels—Soaps.**—Respondent, a corporation, engaged in the manufacture of soaps 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 words "soaps of the British Empire" and/or of the pictorial representation simulating in appearance the royal coat of arms of the British Empire, or of any other word or words or pictorial representation as a mark, brand, or label for its said products 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 products are made or manufactured in the British Empire, or any part thereof, and imported into the United States.

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. (Apr. 28, 1933.)

**1047. False and Misleading Brands or Labels—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery 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 hosiery in interstate commerce, agreed to cease and desist from the words "pure thread silk reinforced with art silk" as a brand or label for said hosiery or as representative or descriptive of a product not composed of silk. It also agreed to cease and desist from the use of the word "silk" either independently or in connection or conjunction with the word "art" or with any other word or words, or in any way as descriptive of its hosiery so as to import or imply that the said hosiery is composed of silk, when such is not the fact. If the hosiery is composed in substantial portion of silk and the word "silks" is used as descriptive thereof, then in that case the 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 hosiery is not composed wholly of silk and which will otherwise properly and accurately represent, define, and describe said hosiery so as to indicate clearly that the same is 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. (Apr. 28, 1933.)

**1048. False and Misleading Trade or Corporate Name and Advertising—Men's Furnishing Goods.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of men's furnishing goods, including shirts, underwear, hosiery, and neckwear by mail order, 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 "mills" either independently or in connection or conjunction with any other word or words, as a part of or in connection with the trade name under which he carries on business in interstate commerce; and from the use of the word "mills" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that he owns, controls, or operates any factory wherein the products sold and distributed by him are manufactured or fabricated, or that he is the manufacturer of such products, when such is not the fact; the use of the word "free" either independently or in connection or conjunction with any other word or words, in any way which may have the capacity or tendency to mislead or deceive purchasers into

the belief that the products referred to are given free or bestowed without compensation, or that their cost is not included in the price paid by the purchaser 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. (May 1, 1933.)

**1049. False and Misleading Advertising—Paints.**—Respondent, an individual, engaged in the sale and distribution of paints 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 paint in interstate commerce, agreed to cease and desist from the use of the statement and representation "Buy your paint direct and save middlemen's profits" 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 mill, plant, or factory wherein is made or manufactured the paint sold and distributed by him in interstate commerce, when such is not the fact.

Respondent also agreed that if he 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 him in the trial of the complaint which the Commission may issue. (May 3, 1933.)

**1050. False and Misleading Advertising—Medicated Drinking Water.**—Respondent, a corporation, engaged in the preparation and bottling of a medicated drinking water, 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 publishing, distributing, and circulating in interstate commerce any advertisements or advertising matter consisting of or containing alleged letters from users of said product containing statements, representations, or allegations that the writers thereof have been cured by the use of said product of any serious or chronic ailment; and from the circulation of advertisements or advertising matter which contain statements and representations claiming for said product curative or medicinal properties other or greater than those usually found in ordinary drinking water or other nonstimulating beverages.

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 15, 1933.)

1051. **False and Misleading Advertising—Refrigerators.**—Respondent, a corporation, engaged in the manufacture of refrigerators and ice chests 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 "porcelain enamel" and/or "vitreous enamel" either independently or in connection or conjunction with any other word or words in its advertisements and advertising matter circulated in interstate commerce to designate and describe a product not consisting of porcelain or vitreous enamel; and from the use of the words "porcelain enamel" and/or "vitreous enamel" in any way which may have the tendency or effect to confuse, mislead or deceive purchasers into the belief that the product so designated and described consists of porcelain or vitreous enamel and/or has the qualities of porcelain or vitreous enamel, 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, 1933.)

1052. **False and Misleading Advertising—Fish.**—Respondent, a corporation, engaged in packing fish 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 the words "white meat" in its advertisements or advertising matter circulated in interstate commerce, to describe or designate a tuna fish product made of a fish other than albacore (Germo Alalunga); and from the use of the words "white meat" in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the tuna fish product so described and designated is made of the albacore (Germo Alalunga), 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, 1933.)



1053. **False and Misleading Advertising—Furniture.**—Respondent, a corporation, engaged in the manufacture and sale of upholstered furniture 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 the word "Persian" either independently or in connection or conjunction with any other word or words to designate and describe a product not manufactured in nor imported from Persia; and the word "mohair" either independently or in connection or conjunction with any other word or words to designate and describe a product not composed wholly of mohair as that term is generally understood by the trade and the purchasing public; or unless, if the product referred to is composed in substantial part of mohair, and the word "mohair" is used to describe and designate the same, the word "mohair" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "mohair" is printed so as to indicate clearly that the product is not composed wholly of "mohair" but of a product or products other than "mohair".

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, 1933.)

1054. **False and Misleading Advertising—Cosmetics.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of cosmetics, including rouge, lipsticks, face powder, dusting powder, perfumes, and bath salts, and in competition with other corporations, individuals, firms, 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 "created in Hollywood" either alone or in connection with any other word or words in the advertisements and sale in interstate commerce of products not manufactured or compounded at Hollywood; and from the use of any other word or words which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that the products so designated and referred to were manufactured or compounded at Hollywood, in California, when such is not the fact; the use of any portraits of well-known and popular actresses and screen artists in connection with words implying or

which may produce the impression that such actresses use the products so advertised, or that they have recommended or endorsed 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 facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 22, 1933.)

**1055. False and Misleading Brands or Labels—Bay Rum.**—Respondent, a corporation, engaged in the manufacture of cosmetics including bay rum 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 bay rum in interstate commerce, agreed to cease and desist from the use of the words "West Indian bay rum" either independently or in connection or conjunction with any other word or words, pictorial representation or in any other way on labels affixed to its product, or 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 of foreign origin, or manufactured in the West Indian Islands of ingredients obtained therefrom, 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 of facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 22, 1933.)

**1056. False and Misleading Brands or Labels and Advertising—Soaps and Cleaners.**—Respondent, a corporation, engaged in the manufacture of soaps and cleaners 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 in advertisements and advertising matter, or on labels or letterheads circulated in interstate commerce, of the words "U.S. Government standard" and from the use of any statements or representations which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that the Government of the United States, or any department or bureau thereof has issued any official specification or standard to which said products conform, or that the products so labeled and represented have been officially endorsed or approved

by the head of any department or bureau 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. (May 22, 1933.)

1057. **False and Misleading Brands or Labels and Advertising—Enamel, Paint, and Varnish.**—Respondent, a corporation, engaged in the manufacture of enamel, paint, and varnish products, 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 "synthetic porcelain" or the word "porcelain" in any way so as to confuse, mislead, or deceive purchasers into the belief that the product so designated and described is porcelain or vitreous enamel 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 24, 1933.)

1058. **False and Misleading Brands or Labels and Advertising—Yarns.**—Respondent, a corporation, engaged in the production of yarns 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 yarns in interstate commerce, agreed to cease and desist from the use on labels affixed to its said products or in its printed matter distributed in interstate commerce of the word "wool" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of its 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 said products are composed wholly of wool, unless when the said products are 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 in type equally as conspicuous as that in which the word "wool" is printed so as to indicate clearly that the said product is not composed wholly of wool and that will otherwise indicate clearly

that the said product is composed in part of a material or materials other than wool. The said corporation also agreed to cease and desist from the use on its labels, or in its said printed matter of the word "silk" either independently or in connection or conjunction with any letter, syllable, word, or words, or in any way as descriptive of its said products so as to import or imply or which may tend to confuse, mislead, or deceive purchasers into the belief that the said product is composed of silk in whole or in part, 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 24, 1933.)

**1059. False and Misleading Trade or Corporate Name and Advertising—Correspondence Courses.**—Respondent, an individual, engaged in conducting a correspondence school, the courses of which consist of instruction in business administration and management, and the preparation of pupils for passing civil-service examinations, 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 "university" either alone or in connection with any other word as part of or in connection or conjunction with his trade name; and from the use of any trade name containing the word "university" or any other word or words in his advertisements or advertising matter distributed in interstate commerce so as to confuse, mislead, or deceive purchasers into the belief that the said respondent is conducting a university, or that his school is a university or extension university, as those words are commonly understood by the purchasing public; representing either directly or through salesmen or by any other means whatsoever that his courses of instruction are to be, or will be, given free to students, or that a certain student or students in each community has been or is selected to receive a course of instruction free, or without the payment of tuition, when such is not the fact; and from stating and representing that he gives free tuition and charges only for materials used in his course of instruction, 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 24, 1933.)

**1060. False and Misleading Trade or Corporate Name and Advertising—Radios, etc.**—Respondent, a corporation, engaged in the sale and distribution of radios, radio equipment, phonographs, phono-

graph records, and aluminum ware, 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 words "associated manufacturers" or of the word "manufacturers" either independently or in connection or conjunction with the word "associated" or with any other word or words as part of its corporate or trade name, or in its catalogs or printed matter, or in any way so as to import or imply that the said corporation makes or manufactures the products sold by it in interstate commerce, and from the use of the pictorial representation of a plant or factory in its catalogs or printed matter distributed in interstate commerce so as to confuse, mislead or deceive purchasers into the belief that the said corporation owns, operates, and controls the plant or factory in which the said products are made or manufactured and/or that the products sold by the said corporation are made or 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. (May 24, 1933.)

**1061. False and Misleading Trade or Corporate Name, Brands, or Labels and Advertising—Sweaters and Knitted Goods.**—Respondent, a corporation, engaged in the sale and distribution of sweaters and knitted goods 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 its product in interstate commerce, agreed to cease and desist from the use of the words "knitting" and "mills" or either of them 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, and from the use of the words "knitting" and "mills" or either of them in connection or conjunction with its corporate or trade name or otherwise on its letterheads, envelopes, order blanks, or other printed matter or on its labels affixed to products 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 a mill or factory wherein is made the product sold 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. (June 7, 1933.)

**1062. False and Misleading Brands or Labels—Threads.**—Respondent, a corporation, engaged in the manufacture of threads and in the sale and distribution thereof chiefly to jobbers and garment manufacturers 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 its said product in interstate commerce, agreed to cease and desist from the use of the word "silk" either independently or in connection or conjunction with any other word or words, or in any way on the labels affixed to its 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 composed, made, or manufactured 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. (June 7, 1933.)

**1063. False and Misleading Brands or Labels and Advertising—Pewter, Brass, and Copper Wares.**—Respondent, a corporation, engaged in the manufacture of pewter, brass, and copper wares 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 or selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "old English" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products referred to are manufactured in or imported from England, 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 14, 1933.)

**1064. False and Misleading Brands or Labels and Advertising—Flavoring Products.**—Respondents, engaged in the sale and distribution of flavoring products 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 from the use of the word "extract" either independently or in connection or conjunction with the words "lemon", "pineapple", or "strawberry" as descriptive of their said products and which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are extracts and/or products in concentrated form composed or made respectively from the juice or the fruit of the lemon, pineapple, or strawberry, when such is not the fact. Said respondents also agreed to cease and desist from the use of the words "true fruit", "orange", "grape", "apricot", "raspberry", or any of them, either independently or in connection or conjunction each with the other, or with any other word or words or in any way as descriptive of their 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 composed respectively of "true fruit" or the juice or the fruit of the orange, grape, apricot, or raspberry, 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. (June 14, 1933.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS<sup>1</sup>

0332. Vendor-Advertiser—Gallstone and Bladder Remedy.—E. E. Paddock of Kansas City, Mo., vendor-advertiser, is engaged in selling an alleged home remedy for gallstones and gall bladder irritations, and in advertising represents:

“Gall Stones and Gall Bladder Irritations. My home treatment has been successfully used for over 30 years for cause of gall stones of the liver and catarrhal inflammation and infection of the gall bladder.

“\* \* \* my prescriptions embody the combined knowledge of the medical profession on this subject \* \* \*.

“The purpose of the treatment is to Get At and Correct The Cause of gallstones.

“\* \* \* a mild, pleasant, effective aid to Nature to stimulate the organs to greater activity and to induce the flow of healthy bile, in which gallstones do not long remain.

“\* \* \* a treatment that assists Nature to build up the overworked organs to function normally again and rid themselves of stagnant sediment resulting from an inactive liver and gall bladder.

“It is intended to \* \* \* combat the infection of the gall bladder.”

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published and circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said treatment is an adequate treatment for gallstones, gall bladder disorders, or liver disorders.
- (b) That said treatment will get at or correct the cause of gallstones.

<sup>1</sup> Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, July 18, 1932, to June 18, 1933, inclusive. For digests of previous stipulations, see vols. 14, 15, and 16 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602 et seq.



- (c) That said treatment will so strengthen or stimulate the organs that they will take care of the gallstones.
- (d) That said treatment will induce a flow of healthy bile in which gallstones will not remain.
- (e) That said treatment will cause the organs to function normally and thereby rid themselves of stagnant sediment.
- (f) That said treatment will combat infection of the gall bladder.
- (g) That the prescriptions, by which said treatment is prepared, embody the combined knowledge of the medical profession,

and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0333. Vendor-Advertiser—Treatment for Drooping Chins.—Health Appliance Co., of Cleveland, Ohio, vendor-advertiser, is engaged in selling an appliance and an astringent to lift drooping chins, and in advertising represented:

“Amazing results are secured quickly with the Corinthian Combination of both medicinal and physical effort. This treatment lifts the drooping chin line by shrinking relaxed muscles and reducing flesh cells.

“Apply the Corinthian Astringent Lotion at night before retiring. Then put on the netlike head piece with chin strap to hold up muscles and flesh while the astringent lotion aids the shrinking—all during your sleep.

“Simple, scientific and certain, the Corinthian Combination quickly brings back the fascination of that youthful chin line of girlhood.”

which the Federal Trade Commission deems incorrect, exaggerated, and misleading, in that the only reduction or correction caused by this appliance is by the pressure it exerts, which limits the supply of blood to the area and the use of the astringent will not cause a shrinkage of the muscles.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

That the Corinthian Astringent Lotion aids or causes a shrinkage of muscles in the chin. (Sept. 12, 1932.)

0334. Vendor-Advertiser—Sargon and Sargon Soft Mass Pills.—G. F. Willis, Inc., of Atlanta, Ga., vendor-advertiser, is engaged in

selling Sargon and Sargon Soft Mass Pills, and in advertising represented:

- “Overcomes constipation;
- “Feed Starving Nerves and impoverished blood;
- “Increase bodily vigor;
- “New discovery is triumph in field of modern chemistry;
- “New and revolutionary formula;
- “Feeds new strength to stomach and nerves;
- “Encourages eager appetite at meal time; Sound, natural sleep at bed time;
- “Brings glad news to torpid liver sufferers;
- “Overcomes gas bloating;
- “Helps to enrich the blood;
- “Inward trouble ends as Sargon brings tingling new energy;
- “Dr. Walter R. George, M.D., sees in this astounding medical triumph a timely aid to thousands of ailing sufferers and explains who should take Sargon as follows:

‘Pale, tired out, skinny, poor-of-blood people harassed by simple anemia should rejoice in new-found strength, keen, hearty appetite, increased weight and all day pep. Suffers with dizzy spells, sour stomach, acidity, heartburn, belching, headaches, foul taste, bad breath, bloating gas and constipation may look forward to happy days as the Sargon formulae wakes up the sleepy liver to secrete the precious bile that tends to prevent putrefaction, aid digestion and prevent constipation.’

“Stomach and liver sufferers here, rejoice at words of utter confidence in Sargon;

‘A treatment designed to build up deficient metabolism, restore haemoglobin in the blood to normal, stimulate the action of the liver and gall bladder, promote glandular activity, and thereby increase bodily vigor and well being’;

“Stimulates the liver and bile flow;

“Endorsed by physicians; etc., etc., etc.”,

which the Federal Trade Commission holds to be incorrect in certain respects and misleading and exaggerated in others in that:

The preparation as analyzed does not warrant the making of therapeutic claims beyond those of a stomachic and an alterative, with laxative, tonic, chologogic, and diuretic properties; whereas said advertising claims far exceed these in their terms;

The symptoms referred to as being lack of bile or constipation are symptoms that are very common to many serious diseases;

There is no definite proof that the majority of people over 35 are suffering from lack of bile;

Of the five functions of the liver, the secretion of bile is a minor one, and the taking of respondent's bile salts will stimulate this function alone but have no effect upon the others;

Ox gall is not a new discovery, having been used for 10 years or more to stimulate the flow of bile;

The inference created by some of its advertising claims go beyond the scope of the benefits that can be derived from respondent's medicines, and the limits of its therapeutic qualities are not indicated in the advertisement;

The printing of extravagant testimonials from self-diagnosed users, without qualifying statements, as to the therapeutic limitations of the medicine, is but an indirect way of claiming for it properties that it does not possess;

The testimonial statements as published are not in the exact language of such users, and in some instances have been rewritten and changed to such an extent that they incorrectly represent the facts actually stated by the authors;

The attention of the reader is not attracted by the use of type sufficiently clear and conspicuous, to the fact that the physicians who write in praise of respondent's medicines have been employed or "retained" for that purpose;

Professional statements not based upon the physician's own clinical experiences in connection with this product are generally superficial, inaccurate, and consequently, because of the unmerited weight given them, misleading;

The official, professional, and educational standing of some of the persons quoted is misstated;

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That Sargon is based upon a new, amazing and/or revolutionary formula;
- (b) That Sargon accomplishes its results by new and amazing methods undreamed of only a few years ago;
- (c) That, inferentially or otherwise, Sargon as distinguished from the drugs that compose it, is the result of world-wide research;
- (d) That any benefit may be expected from the taking of Sargon and Sargon Soft Mass Pills other than that resulting from a medicine having tonic, laxative, diuretic, alterative, and cholagogic properties;

- (e) That indigestion, dyspepsia, constipation, and most gastrointestinal disorders, are due, in the great majority of cases, to an insufficient flow of bile caused by a sluggish liver;
- (f) That 7 out of 10 people, or any other definite proportion, past the age of 30 suffer at times from an insufficient flow of bile caused by a sluggish liver;
- (g) That conditions such as constipation, biliousness, loss of appetite, headaches, sallow complexion, sleeplessness, nervousness, and a generally rundown condition are generally the result of a lack of bile flow due to an inactive liver;
- (h) That the cause of 8 out of 10 cases of stomach trouble lies outside of the stomach;
- (i) That said medicine is good for "stomach trouble" unless qualified to say that its efficacy is indicated for colic or other discomfiture due to gas or sour stomach, and for such conditions as may be relieved by the use of a medicine having tonic, laxative, diuretic, alterative, and chologogic properties;
- (j) That signed statements approving Sargon pour in from physicians;

and all representations and statements equivalent thereto in form or substance, and also stipulates and agrees, in connection with the future advertising of Sargon and/or Sargon Soft Mass Pills to cease and desist from:

Publishing, or causing to be published and distributed, statements of various physicians as to the therapeutic value of respondent's products unless and until said statements are based upon the said physician's clinical experience in connection with the use of such products, or the source of physician's information is stated;

Misstating the official, professional, or educational standing of the persons giving testimonials;

The use of headlines containing claims not included in the testimonials quoted;

Publishing testimonials that have been altered in such way as to change their meaning;

Using testimonials for which substantial consideration has been paid unless accompanied by a statement conspicuously setting forth the fact that the endorsement has been given for a substantial consideration;

Publishing testimonials claiming therapeutic results which cannot reasonably be expected from the ingredients in the compound, alone or combined. (Sept. 12, 1932.)

0335. Vendor Advertiser—Stomach Treatment.—Johnston Chemical Co., Fort Bragg, Calif., vendor-advertiser, is engaged in selling

Johnston's Golden S.O.S. Powder, and in advertising represented it was a competent treatment and effective remedy for stomach ulcers, gases, pains, or similar stomach ailments; and that it has proven itself in most stubborn cases, which representations the Federal Trade Commission deems exaggerated and misleading for the reason that an analysis of said product discloses that the ingredients contained therein do not warrant claims that it is a competent treatment for stomach ulcers or kindred stomach ailments.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and also represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodity in interstate commerce, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity beyond the boundaries of the State of California is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that said preparation may be recommended for conditions other than constipation or for neutralizing gastric hyperacidity or for sour stomach, heartburn, flatulence or gas when due to hyperacidity or constipation. (Sept. 12, 1932.)

0336. Vendor Advertiser—Pile Treatment.—S. S. Russell, an individual, trading as The Drysorb Co., St. Louis, Mo., vendor-advertiser, is engaged in selling a pile treatment for home use called Drysorb, and in advertising represented:

"PILES Oldest cases now easy to end as a cold. Costs less with DRYSORB (U.S. REG) the new refined, quick way.

"PILES! Note this modern, clean way to quick, lasting relief.

"Here at last is a remedy for Piles that is quick and clean. A colorless, greaseless, odorless lotion called Drysorb (U.S. Gov. Reg.)

"Medical science has now found this a new and better quick way to end Piles which proves the knife with its pain and expense entirely unnecessary.

"Its action is mild and most comforting. Yet its effects are immediate, powerful and lasting.

"Stop further growth of the drain on your vitality. Start at once with Drysorb.

"A few overnight applications end a light case. While cases of long standing, no matter how stubborn or weakening, yield to Drysorb's constant absorbing action. That is its convincing record.

“NOTE: John Kenrick, of Dallas, Texas, says: ‘After using every known remedy I ended a severe 27 year old case of Piles in a few days with Drysorb.’

“Oldest cases now easy to end as a cold; costs less with Drysorb, the new refined, painless, quick way. Write today for FREE information. Drysorb Co., B-2, St. Louis, Mo.”

which the Federal Trade Commission deems exaggerated and misleading in that the ailment commonly called piles is of a recurrent nature and no permanent cure has yet been discovered. The product offered by respondent is in the nature of a palliative and not a specific remedy to eliminate the cause of piles.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That piles are now as easy to end as a cold;
- (b) That piles may be ended by the use of Drysorb;
- (c) That Drysorb proves the knife entirely unnecessary;
- (d) That Drysorb brings lasting relief from piles;

and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0337. Vendor-Advertiser—Advertising Plan.—T. Hilgendorf and L. Timmerman, trading as Mimeostyle Press, Milwaukee, Wis., vendor-advertiser, is engaged in selling an advertising plan, and in advertising represented that purchasers could:

“EARN \$20 to \$50 Weekly. Responsible company has new advertising proposition. Easy work. Send stamped envelope.”

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and also represent that they have definitely discontinued the business of selling said advertising plan in interstate commerce and they hereby stipulate and agree not to resume hereafter such business in interstate commerce. (Sept. 12, 1932.)

0338. Vendor-Advertiser—Stomach Ulcer Cure.—Ulticur Co., Inc., Chicago Ill., vendor-advertiser, is engaged in selling an alleged cure for stomach ulcers and like conditions, and in advertising represented:

“Thousands of cases of stomach and duodenal ulcers \* \* \* have been effectively and permanently benefitted by this remarkable treatment

“\* \* \* it is no longer wise for anyone to say that ulcers are incurable. They *are* curable

"The Ulticur treatment is the result of the definite knowledge of the causes of stomach and duodenal ulcers \* \* \*

"\* \* \* it is no joke to have the frequent and often continuous torment of open sores in the stomach

"Whatever your condition, whether slight or of intensity and long standing; whether yours is a stomach or duodenal ulcer or some other irritation—decide to get well. Decide to follow the Ulticur

"\* \* \* the joyous relief Ulticur gives to thousands of sufferers from stomach and duodenal ulcers \* \* \*

"\* \* \* for your relief from the ulcer condition \* \* \*

"Why suffer from Stomach Troubles?"

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said medicinal preparation is a competent treatment for stomach or duodenal ulcers not due to hyperacidity;
- (b) That said medicinal preparation is a cure for ulcers;
- (c) That generally ulcers are curable;
- (d) That said medicinal preparation is a competent treatment for open sores of the stomach not due to hyperacidity;
- (e) That said medicinal preparation is a competent treatment for stomach troubles unless such statements are so qualified to indicate that only such results may be expected as are within the scope of its recognized therapeutic properties;

and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0339. Vendor-Advertiser—Bargain Merchandise.—Lee Manufacturing Co., Chicago, Ill., vendor-advertiser, is engaged in selling bargain merchandise at cut prices and giving premiums, and in advertising represented:

(Pictures of articles and prices.)

"Greatest News of the Year! Gorgeous 54-Piece Dinner Set now given ABSOLUTELY FREE and FREIGHT PAID. Simply follow new easy plan. No CANVASSING. You buy nothing. You pay no money for outfit or samples. Mail coupon NOW for FREE Bargain and Premium Book.

"Wonderful Premium. FREE for selling Only a \$3.00 Order of CUT PRICE BARGAINS.

"Just show illustrated catalog of sensational Slashed Price Bargains to friends and neighbors. Show them remarkable savings on things they need. Everything 5¢ to 98¢. Nothing higher.

"15¢ articles for 5¢; 30¢ articles for 10¢; 40¢ articles for 15¢; 50¢ articles for 25¢. \$1.50, \$1.75 and \$1.95 articles for 98¢! Every article full size for family use. We pay freight.

"Be an Agent for us. Have a valuable Premium ABSOLUTELY FREE for selling an order as low as \$3.00. It's fun to introduce our bargains. You need no experience. Just give an hour or two to visiting with friends. Everbody will welcome you. Join the thousands of Ladies who are getting Valuable, Useful Premiums FREE and FREIGHT PAID this new easy way.

"Mail coupon NOW for your copy of big, illustrated Bargain and Premium Catalog—sent FREE and Postpaid. Act Now!

and respondent avers that any use it may have made of inaccurate statements regarding its premium offers was due to inadvertence rather than to lack of good faith or intent to deceive, but does admit that such advertisement is incorrect and misleading in that the reader is led to believe from the advertising set-up, that such 54-piece dinner set may be had for the selling of only \$3 worth of respondent's merchandise, whereas the bargain and premium book when received discloses that said 54-piece dinner set is given as a premium for the selling of \$16.50 worth of said merchandise or else the procuring of three agents who each sell a \$16.50 order; or a 40-piece dinner set for a \$12.50 order or the procuring of three agents who each sell said amount; or a 32-piece dinner set for a \$10 order or the procuring of three such agents; but no dinner set of any kind for a \$3 order; and no premium of any kind is given "free", but only in consideration of either services or cash.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

That inasmuch as it does no manufacturing, the word "manufacturing" will be deleted from its corporate or trade name as soon as the necessary legal steps can be taken to effect such change. (Sept. 12, 1932.)

0340. Vendor-Advertiser—Treatment for Varicose Veins.—C. W. Cook, trustee, operating as a common law trust under the trade name of Dr. Clason Viscose Co., Chicago, Ill., vendor-advertiser, is engaged



in selling Viscose Method for treating varicose veins, and in published advertising represented:

**"HEALS LEG TROUBLE.** Viscose Method stops pain from Varicose Veins, Milk Leg, Phlebitis, Poor Circulation; stops swelling, positively heals leg sores while you work. **SEND FOR FREE BOOK.** Dr. C. B. Clason Viscose Co.

(Picture of Book.)

"This book has shown the way to better leg health to more than 22,000 sufferers. **VISCOSE METHOD** reduces leg swelling, phlebitis, milk leg, by practical external application at home. Stops and prevents itching, burning, pains, numbness, coldness, cramps, poor circulation and varicose vein suffering. Positively heals open leg sores while you walk and work. Send for **FREE** book. State your trouble."

and in booklets, circulars, and follow-up letters:

"By the Viscose Method you learn immediately how to stop pain, heal sores, prevent ulceration of the leg.

"It will reduce all leg swellings and keep them reduced.

"We have explained carefully how relief can immediately be secured with the Dr. Clason Viscose Method of Home Treatment.

"Now you can get relief from the ugly, unsightly, painful condition in your legs whether it be varicose veins, leg swelling, open sores, or ulcers.

"Discouragement and skepticism give place to new hope when you use Viscose Treatment.

"We teach you how to stop vein suffering and heal your leg sores at home.

"A new way has been found to heal leg sores. There are records of over eighteen thousand successes; there are no failures of Viscose Method to heal leg sores from poor circulation.

"At last you can get well and not 'lay up'. Send for it now.

"A sore as large as the hand, open thirty years, is known to heal in a few months with Viscose Method.

"Why not send for Viscose Method today? You can heal your leg sore while you work.

"You can heal it in a few weeks without pain, while you walk and work as usual.

"You no longer need to be a cripple from varicose veins, varicose ulcers, or a swollen leg.

"Will ordinarily stop pain in a few hours and actually heal the sore.

"You need a whole kit of supplies and instructions every ten days to care for the leg properly and heal it. You get it all with Viscose Method.

"Finally, you will soon completely forget your sore leg.

"The first few applications nearly always take down the swelling. These poor circulation ulcers are 'starvation sores.' Viscose Method is the correct way to heal these sores.

"After a few hours you are out of pain.

"It is a positive remedy that will do all we claim for it.

"You will surely heal your sore, and learn how to keep it healed, and prevent future sores.

"Stops development of more veins.

"It heals leg sores and then prevents future leg ulcerations.

"Immediately you will find that the used blood, now standing in stagnant pools in your legs, will begin to flow freely upward, normally to the heart. Your legs will stop tiring so quickly. Any aches or pains will cease. The cramps will be gone. Itching and heaviness will disappear. Swelling will be immediately reduced.

"Viscose Method reduces legs swollen from milk leg or phlebitis, stops painful varicose vein troubles, heals varicose ulcers or leg sores from poor circulation. The use of Viscose Method teaches you how to keep up circulation and prevent ulcerations.

"This new European Method of care and treatment of leg trouble is perfected to enable one to get well without lying up with the leg elevated.

"Viscose Method is a new way of reducing swollen legs.

"It stops suffering quickly.

"Decide to get this positive method of reducing your swollen legs and ankles.

"While you walk and work Viscose Method Heals Varicose Ulcers and Open Sores, Stops Varicose Vein Suffering, Reduces Swollen Legs, Increases Blood Circulation, Heals Leg and Foot Troubles, Phlebitis, Exzema, Fever Leg, etc.

"Regardless of the opinion of anyone who has not experienced its results or seen its accomplishments, Viscose Method produces these remarkable results in a perfectly natural manner, reducing swelling, stopping aches, pains, cramps, itching, eczema or other suffering, such as coldness, burning, etc.

"The method by which you reduce this swelling is to increase the circulation of blood through the leg.

"The swelling is down to nearly normal with a few applications.

"If you suffer from varicose veins, the use of Viscose Method means that you can relieve that suffering by applying Viscose Method.

"Leg rash and ulceration are actually healed by proper use of Viscose Method with medication for the sores.

"The new remedy heals so positively that you can see and feel it from the beginning. The older the sore the quicker it heals in proportion to its size.

"Leg rash and ulceration are actually healed by proper use of Viscose Method with medication for the sores.

"The pain stops, healing starts. More results from one application than from weeks of laying up with leg elevetad.

"The results are so certain in Varicose Ulcers that we can afford to guarantee that sores will heal.

"They all heal quickly if you treat them right. Medicines alone don't increase circulation; Viscose Method does. Pain stops and sores begin to heal. Stops vein suffering. Prevents sores.

"You feel a great change coming on. The leg feels more alive; the swelling recedes promptly.

"Why, the more work you do the quicker it heals.

"By this means you can actually heal the serious complicated forms of leg trouble.

"You can reduce such swelling quickly with Viscose Paste Boot method.

"Varicose Ulcers or Leg Sores from other causes healed quickly while using the leg.

"Varicose Veins reduced like this in two or three weeks. No loss of time from work or pleasure.

"If one is so unfortunate as to suffer from leg swelling from varicose veins of invisible nature, milk leg or phlebitis, this swelling can be easily reduced and much congestion kept out of the leg by reinforced viscose applications, which improves circulation so rapidly that swelling stops.

"You positively can heal ulcers, leg rash and leg sores without loss of time other than that which was necessary to administer the treatments.

"When ankles are moist and exude a watery-like fluid, it means that the congestion is becoming more acute and may quickly approach ulceration of the leg.

"If large scales form, either moist or dry, you can arrest the progress and stop the suffering with Viscose Method.

"You can stop the pain and suffering and learn how to avoid this suffering at any Ambulatorium.

"Heal These Sores Before Starting Absorption Treatments.

"Sores of 30 years standing heal in a few weeks.

"Visible Varicose Veins can be reduced by Dr. Clason's absorption method with ambulant treatments.

"The most difficult problem of those suffering from Varicose Veins is solved by Viscose Method. Heal sores and learn how to keep rid of them.

"Viscose Method reduces milk leg, swelling and Phlebitis, and helps you keep it reduced. It stops leg suffering.

"How to get well and keep well. Make the blood circulate upwards through the leg while you use the leg. You can do it with Viscose Method.

"STOPS VARICOSE ULCERS, Eczema, Itching, Burning, Scaliness, etc.

"These leg sores won't heal with medicine alone. Viscose Method heals such sores.

"Pain will finally stop. Healing starts at once. The Eczema, and the itching, etc., gradually disappears.

"After three years of study and much actual experience I was convinced that the method could not fail.

"You can get well while you work when you use Viscose Method.

"The use of Viscose Method assures prompt and positive relief. Really Stops Suffering—Reduces Swelling—Inflammation—Heals Sores, Prevents Sores and Keeps Legs Healed.

"What Viscose Method Does for Others—It will Do for You.

"Poor circulation caused by Varicose Veins, Milk Leg, Phlebitis, Operations, Injuries or Fevers is the real source of nearly all leg troubles. Viscose Method heals leg sores, eczema or rash and prevents such sores because it increases circulation.

"Viscose Method Heals Leg Sores, prevents sores from poor circulation caused by Varicose Veins, Milk Leg, Operations, Injuries or Fevers, and relieves suffering from these ailments.

"Leg rash and ulceration are actually healed by proper use of Viscose Method with medication for the sores.

"Leg Sores Healed, Leg Sores, Ulcers, Skin Rash, Eczema, Caused by Varicose Veins, Poor Circulation of Legs, etc., all Healed by New European Method—THE VISCOSE METHOD.

"THE DR. CLASON CIRCULATION METHOD. A very Uniformly Successful System of Home Treatments For Stopping Varicose Vein Suffering, Reducing Swollen Legs or Milk Leg, Healing Open Sores and Varicose Ulcers, Increasing Leg Circulation.

"It is recommended for all sorts of painful varicose vein trouble, for swollen legs and for ulcers or open sores.

"VARICOSE VEINS IN THE LEG.—You can stop the pain, you can relieve the aches and cramps, you can soothe the itching, reduce the swelling and prevent the suffering due to varicose veins in the legs.

"Increased circulation is a positive way to get relief from troubles caused by slow circulation in the legs.

"Increased circulation, as produced by Viscose Method, seems to be the one dependable means of relief and healing.

"The only other method known in the world today is to 'lay up' with the leg elevated.

"Nature needs assistance in restoring the circulation and Viscose Method gives this assistance in a very comfortable and natural manner. You are practically certain to stop leg suffering, reduce the swelling and heal the leg through the increased circulation promoted by the Viscose Method.

"The Viscose Treatment, now used successfully in practically all cases of leg suffering, whether caused by Varicose Veins, Phlebitis (inflammation of the veins), Milk Leg, ulcerations of the leg and many other causes.

"In actuality, if you are unable to work and walk, Viscose Circulation Method will really put you on your feet almost immediately.

"Increased circulation as furnished by Viscose Method practically always gives relief.

"This is at times mistakenly diagnosed as Dropsy. Such conditions are readily reduced by the Viscose Circulation Method.

"When you have corrected the diminished circulation, which causes most of the suffering, your trouble ceases almost as promptly as a toothache which received the right treatment.

"After pain ceases you must use Viscose Method long enough to reduce whatever complications the congestion has caused.

"Each Viscose Method supplied is quite fully equipped with everything required for the purpose, and speedy relief is assured.

"This treatment is adapted for home use. It enables you to obtain quick relief from tired feet, pains, aches and cramps and varicose vein suffering in the legs, to stop Swelling and heal Open Sores or ulcers on the legs while you work and walk.

"There is in store for you a most happy relief from aches and pains and tired feet with the use of the Viscose Circulation Method described herein.

"There is nothing in this country today which carries out the true scientific principle for the care of bad legs so well and so effectively as the Dr. Clason Viscose Method of Treatment. The Viscose Method heals by increasing blood circulation. This method succeeds where all other medication fails.

"A hideously swollen and painfully inflamed varicose vein leg can be reduced to normal size and be relieved and made comfortable in an unusually short time by the Dr. Clason Viscose Method.

"It prevents congestion and stops Varicose suffering.

"The Viscose Method, which heals your sores, stops pains, aches, and swellings, is the rarest bargain ever offered you.

"There are no failures of Viscose Method to reduce swelling produced by poor venous circulation and nearly all leg sufferers have such trouble.

"Correct the leg circulation by Viscose Method and the Eczema, etc., will heal and tend to disappear even if located elsewhere on the body.

**"WE CAN ABSOLUTELY GUARANTEE RELIEF AND HEALING BY VISCOSE METHOD.** Results are so positive and sure from the use of this scientific method of solving leg troubles that an absolute guarantee can be given to heal any and every varicose ulcer on the leg no matter how long it has been open or how old you are—provided one thing only, that it is applied and used according to directions.

"It will keep you rid of such suffering.

"Practically all Varicose ulcers can be healed by it.

"Speeding up the circulation in the leg will dissolve pain and start healing almost like magic.

"Viscose Method heals a sore sound and well, without a scab and you can keep it healed, by keeping up circulation.

"With Viscose Treatment rightly applied you may relieve the congestion and the sores heal up at once.

"Viscose Method will remove this congestion from within."

which statements the Federal Trade Commission deems incorrect, exaggerated, and misleading in that viscose is a method of treating leg ulcers which has been used by physicians for some years and its therapeutic properties are known to the medical profession; it consists principally of a paste boot, which serves under proper conditions to improve the return circulation of blood through the veins and thereby makes it possible for ulcers to heal, and also aids in preventing the stagnation of blood in enlarged or varicose veins; yet such method of treatment cannot be depended upon to heal all leg ulcers, and does not constitute an infallible treatment for varicose veins, open sores or ulcers, swollen legs and phlebitis; nor will it assure that leg ulcers once healed will not recur, or that swelling in the legs will not recur when the boot is discontinued; and furthermore this method would not constitute a treatment for ulcers due to syphilis, tuberculosis, diabetes, and other conditions quite common in occurrence, such as serious cardiac and kidney disturbances. It is therefore held that such statements and representations have the capacity and tendency to mislead and deceive the purchasing public into buying said viscose method in the erroneous belief that the same are true and that the use thereof will accomplish in all cases the results set out or indicated therein.

Respondents in printed booklets describing the viscose method, publishes pictures of office buildings in San Francisco, New York, and Chicago, respectively, of 8, 15, and 14 stories in height, captioned "Viscose Ambulatoriums", whereas the space actually occupied in each building by respondent's business consists of but a few office rooms.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the Viscose Method will invariably "stop" or "heal" any of the following conditions:

Pain from varicose veins

Leg Swellings

Leg sores

Leg ulcerations

Itching and heaviness

Varicose ulcers

Open sores

Varicose veins

Leg and foot troubles

Phlebitis

Eczema

Fever leg

Milk leg

Aches and cramps

Coldness and burning

Leg rash

Scaliness

Blood congestion

Leg tiring

The "serious complicated forms of leg trouble"

"Certain conditions mistakenly diagnosed as dropsy"

- (b) That the Viscose Method will without qualification "actually" or "positively" or "surely" or "practically always" or "speedily" or "promptly" or "at once" or "immediately" or "certainly" heal anything, or reduce swellings, or relieve suffering, or increase circulation;
- (c) That such symptoms will in all cases "disappear" or "cease";
- (d) That by the use of the Viscose Method, one may "rid" himself of such symptoms, or "get well";

- (e) That the Viscose Method will, without qualification prevent future leg ulceration or future sores, or will enable one to "keep rid" of same; or will stop development of more veins; or arrest the progress of such symptoms;
- (f) That there are no failures of the Viscose Method;
- (g) That one need no longer be crippled with the Viscose treatment available;
- (h) That the swelling goes down to nearly normal with a few applications; or that after a few hours one is out of pain; or that sores of 30 years' standing heal in a few weeks; or that the sore leg will soon be completely forgotten, unless qualified to indicate such results are not to be expected in all cases;
- (i) That this is a "uniformly successful" system of home treatments;
- (j) That there is nothing in the country so scientific and effective as the Viscose Method;
- (k) That the Viscose Method applied to the leg will heal eczema even if located elsewhere in the body;
- (l) That by the Viscose Method, relief and healing "of any and every varicose vein, however old or open", can be "absolutely guaranteed";
- (m) That the Viscose Method will dissolve pain and start healing almost like magic;
- (n) That the only other method known in the world today for treating varicose veins is to "lay up" with the foot elevated;
- (o) That the Viscose Method is the best recognized method to reduce varicose veins;

and all representations and statements equivalent thereto in form or substance. (Sept. 12, 1932.)

0341. Vendor Advertiser—Prostate Gland Treatment.—W. D. Smith and Thomas Baden, trading as the Mid-West Products Co., Kalamazoo, Mich., vendor-advertiser, is engaged in selling "Prosager" to treat the prostate gland, and in advertising represented:

**"PROSTATE SUFFERERS. FREE BOOKLET EXPLAINS TRIAL OFFER:**

"Lame back Sciatica Frequent night rising, Impotency, Insomnia, Lost Vigor, etc. are all symptoms of Prostatic Lesion. Physicians endorse massage as a safe effective treatment. Use 'PROSAGER', a new invention which enables any man to massage PROSTATE GLAND in the privacy of his own home. It brings relief with the first few treatments and must help or it costs nothing. NO DRUGS or ELECTRICITY. Write Dept. N, Midwest Products Co., Kalamazoo, Mich.



"65 percent of men past 40 years have prostatic lesion.

"Authorities agree that nearly sixty five percent of all men past the age of forty have prostatic hypertrophy, while many others have prostatitis.

"Free 5 day trial offer.

"Use the Prosager 5 days FREE!

"Are you subject to any of the following symptoms. Check yours. Cramps, Leg pains, Arm pains, Headache, Foot pains, Lumbago, Rheumatism, Back pains, Backache, Insomnia, Constipation, Nervous, Melancholy, Irritable, Depression, Pelvic pains, Bladder pains, Frequent Urination, Rectal pains, Pain in spermatic cords, Nagging, bearing down pelvis pains, Impotency, Frequent night rising, Loss of pep, and manhood, Exhausted or excessive tired feeling . . . We know that if you have prostatic trouble we have the instrument that you need to bring you back to Royal good health and Powerful manly vigor.

"Practically every responsible physician concedes that the only real treatment for prostate trouble is massage;"

when in truth and in fact the Federal Trade Commission holds said statements to be incorrect in certain respects and exaggerated and misleading in others in that the ailments mentioned often are caused by conditions other than hypertrophy or lesion of the prostate gland, and that the claims made for the prosager are too broad, and the symptoms recited are too general; and that the so-called free trial offer is not free inasmuch as the price must be first paid, on a money-back guarantee.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That inferentially or otherwise, the various symptoms named in such advertising literature are the result of hypertrophy, lesion or other derangement of the prostate gland, unless duly qualified to show that they may be sometimes so diagnosed;
- (b) That 65 percent, or any other percentage not capable of proof, of men past 40 years have prostatic lesion; or that authorities agree that said percentage of men have prostatic hypertrophy besides many others who have prostatitis;
- (c) That practically every physician concedes that massage is the only real treatment for prostatic trouble;

(d) That a trial offer is "free" where the price of the commodity is required before shipment, even upon a money-back guarantee;

and all representations and statements equivalent thereto in form or substance. (Sept. 12, 1932.)

0342. **Vendor-Advertiser—Feathers, Pillows and Bedding.**—Jacob Gilbert and Joseph Gilbert, trading as American Feather & Pillow Co., Nashville, Tenn., vendor-advertiser, is engaged in selling feathers, pillows, and bedding, and in advertising represented:

"FEATHER BEDS Delivered Free.

"New, sanitary feather beds, Pillows, Feathers, Bedding and Home Furnishings of all kinds, delivered free on 10 days trial. Our low prices and high quality will surprise you. Satisfaction guaranteed. Write today for free, big bargain book and sample feathers."

which representations the Federal Trade Commission deems incorrect and misleading in that as a matter of fact said merchandise is not delivered either "free" or "free on 10 days' trial", although delivery charges are paid by respondent, inasmuch as customers are required to remit the full price with order of less than \$10, or one-fourth cash and balance c.o.d. with order of more than \$10.

In a stipulation filed with and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

That a prospective purchaser may receive delivery of said merchandise either free or free on 10 days' trial, or for any other period, so long as the purchase price thereof or a deposit thereon must be paid before delivery, notwithstanding the fact that the money will be repaid if not satisfactory. (Sept. 12, 1932.)

0343. **Vendor-Advertiser—Sex Stimulant.**—Raymond Doyle, doing business as Lecithin Co., Long Island City, N.Y., vendor-advertiser, is engaged in selling Lecithin Tablets, alleged to be a sex stimulant, and in advertising represented:

"BACK AGAIN.

"Lecithin, Most Effective Stimulant for Men Who Find Themselves Slipping, Again Available. Marvelous to Bring Back Needed Strength! Over 20,000 Satisfied Users.

"Men who have read The Police Gazette for years, will be glad to learn that Lecithin is back again to help bring that show of pep and vigor, which is the mark of strong, healthy man.

"Lecithin Tablets contain a wonderful combination of valuable yohimbim and lecithin, obtained from distant climes and brought to America because of their power to activate the dormant functions of man.

"Well over 20,000 men have use Lecithin with huge success, as shown from every State in the Union.

"Positive Guarantee

"Of What use is a good appearance, when a man knows he's physically weak? Lecithin has brought back many a man to natural strength and popularity, when other methods have failed."

which statements the Federal Trade Commission deem exaggerated and misleading to the injury of competitors and public.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Sept. 12, 1932.)

0344. Vendor-Advertiser—Treatment for Eczema and Psoriasis.—Conley Ointment Corporation, trading as Conley Ointment Co., Muncie, Ind., vendor-advertiser, is engaged in selling a medicinal preparation designed as a treatment for eczema and psoriasis, and in advertising represented:

"Eczema. Psoriasis. Quick positive permanent relief from Eczema, Psoriasis, etc. Used and endorsed by physicians. Succeeds where other treatments fail. Write for Free Sample containing trial treatment!"

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Sept. 12, 1932.)

0345. Vendor-Advertiser—Strength and Weight Builder.—Mary E. Boyer and Floyd R. Perkins, trading as Gadurette Co., Battle Creek,

Mich., vendor-advertiser, is engaged in selling "Gaduettes" to increase weight and strength, and in advertising represented:

"If you are thin and underweight, lack vital strength, beware!—correct that condition before it grows any worse. Don't look like a scarecrow—put on more weight at once with Gaduettes, the pleasant tonic.

"Gaduettes Assure Weight and Vitality to Ripe Old Age.

"\* \* \* that builds you up with pounds of good, sound, solid flesh and vital energy and makes you look and feel like a million dollars.

"Why stay weak and skinny any longer, when you can quickly put on weight and be fully rejuvenated \* \* \*.

"\* \* \* flesh and strength builder.

"\* \* \* we are mighty will pleased to have the privilege of helping you gain the weight and resultant strength and vitality \* \* \*.

"The 50-cent trial package of Gaduettes which we are sending you under separate cover will begin to do that very thing.

"Every man or woman, truly in earnest in building themselves up physically and thus regain all the attributes that added flesh and vitality brings about, will be glad they sent for the free trial treatment.

"They will find in the treatment itself the means to accomplish their desires and in a manner most pleasant. And the time is not too far away, if one follows up the treatment immediately, where the full enjoyment of added weight and the accompanying benefits become plainly apparent.

"The flesh, health, vitality thus established are yours \* \* \*.

"The Gadulette Treatment will prove to you \* \* \* that you can gain WEIGHT and STRENGTH and VITALITY.

"Right from the start you notice striking evidence of improvement. You feel better, you look better, you gain weight, health, strength.

"Regardless of age, sex or difficulties it accomplished almost unbelievable results.

"Simple, safe and certain.

"It rounds you out and builds you up to normal body weight, puts on solid flesh—not fat—on arms, legs, chest or wherever you may need it. It makes you radiant with glowing health, vitality—and brings about a dazzling personality \* \* \* This can all be yours, too.

"How can anyone losing weight, growing thin or are extremely underweight, really enjoy themselves? In the first place this condition often indicates an anaemic, run-down body that may lead to serious results. For various types of chronic rheumatism,

neuralgia, neurasthenia, bronchitis or even goitre and gout and wasting diseases are often associated with excessive leanness. So, if you are losing weight don't let the condition run on—correct it NOW before it grows worse.

“With this new ‘normalizing’ treatment weak, run-down men quickly put on weight, build up muscle, health and strength  
\* \* \* You will feel yourself physically fit again.

“Gaduettes must bring about the desired end in your particular case—whether to restore loss of weight or loss in vitality peculiar to run-down, nervous male or female organs or early old-age in either sex.

“For loss of vitality, characteristic masculine or feminine weakness or impaired physical powers of either.

“\* \* \* flesh-building and increasing weight.

“DON'T BE ‘SKINNY’. Puny, Bony, Run-Down Men, Women and Children Gain Weight and Strength this New, Easy Way.

“Builds Solid Flesh.

“Builds Weight and Strength.

“Various types of chronic rheumatism, neuralgia, neurasthenia, bronchitis and even goitre and gout are often associated diseases. If you are under weight decide at once to correct the condition before it grows worse.

“Just take these remarkable Gaduettes for a short time and see how quickly they help you to step out of the neglected class of skinny folks. In almost no time you develop a figure of health and beauty that everyone will admire. Gaduettes produce such perfectly marvelous results you'll be actually astonished after taking them a short time.”

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the use of said preparation will cause an increase in weight, strength, vitality, energy, health, unless such representations are qualified to indicate that said preparation is not efficacious in conditions in which there is a debilitating constitutional disease;
- (b) That said preparation is efficacious regardless of the age or sex;

- (c) That the use of said preparation will show an increase in weight and vitality;
  - (d) That said preparation is a flesh builder or a strength builder;
  - (e) That said preparation is a competent treatment for masculine or feminine weaknesses;
  - (f) That said preparation is a competent treatment for rheumatism, neuralgia, neurasthenia, bronchitis, goitre or gout;
- and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0346. **Vendor-Advertiser—Skin Treatment.**—Beauty Research Corporation, advertising also as Dr. Harris H. Luntz, Brooklyn, N.Y., vendor-advertiser, is engaged in selling “Formula Q” an alleged treatment for age lines, wrinkles, sagging, faded and blemished skin, and in advertising represented:

- “New Beauty Overnight;
- “Look 10 Years Younger;
- “Age lines, wrinkles go;
- “Famous, old secret lost for years re-discovered;
- “Ends lines, wrinkles, makes faded skin young;
- “Clears away every blemish;
- “Changes yellow paleness to natural color;
- “Madly loved by two Kings;
- “How woman 65 preserved youth. Her beauty secret found;
- “Youthful charms stole lovers from women at court;
- “Acts quickly to erase age lines, wrinkles, faded, sallow, sagging skin, coarse pores, pimples, blackheads;
- “A clearer, softer, more beautiful girlish skin overnight”;

and many other similar statements, claims and representations which are deemed by the Federal Trade Commission to be incorrect, exaggerated, and misleading.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that it has for the near future discontinued the advertising of said commodities, and does not intend at this time to resume such advertising in the future; and that the sale of said commodities is limited to the filling of unsolicited orders.

Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Sept. 12, 1932.)

0347. **Vendor Advertiser—Chewing Gum and Candy Mints, and Premiums.**—The Helmet Co., a corporation, Cincinnati, vendor-advertiser, is engaged in selling chewing gum and candy mints and

paying agents in various premiums and small cash commissions, and in advertising represented:

"31-Piece Dinner Set. The ware is made in the Grecian shape in an Ivory body and pretty floral design. This design is a colored medallion, finished with a gold edge."

"WRIST WATCH. Rectangular case, beautifully engraved and jewel set stem; dainty dial with raised gold numerals. Has a fine 6 Jewel shock-proof movement \* \* \*.

"Boys' or Men's WRIST WATCH. With a high grade jewelled movement. Engraved case and dial, with platinum-like finish which cannot discolor.

"Girls' or Ladies' WRIST WATCH. Beautifully engraved; figures and hands are raised gold; jeweled stem \* \* \* Genuine 6 jewel movement.

"Boys' or Men's wrist watch. Fancy engraved case and dial \* \* \* 6 jewel movement \* \* \* high grade time piece.

"PEARL NECKLACE. Pearls are always stylish and in good taste. These are very beautiful, well matched, and lustrous. They are twenty-four inches long, strung on stout thread and close with a handsome clasp.

"AUTO ROBE. Measures 54 by 76 inches, with fancy fringed ends. There is real wool in this robe; it will give years of service.

"TOILET SET. The hair brush and mirror are finished in ivory, very latest style. A lovely present for sister, mother, or sweetheart.

"SUNFLOWER CLOCK. This beautiful clock has a gold etched dial and a guaranteed 30-hour Lux movement.

"FLAPPER CLOCK. Carved design and richly hand decorated. With a fancy gold dial and unbreakable crystal.

"ALUMINUM PERCOLATOR. Pure, heavy aluminum with glass top, and handle that won't burn.

"ALUMINUM ROASTER. From one of America's finest aluminum factories.

"6 QUART ALUMINUM KETTLE. Made of heavy, good quality aluminum with a lid that locks tightly to the kettle.

"SET OF THREE ALUMINUM SAUCE PANS. Each pan has rolled edge, two lips and strong handle. Made of extra fine aluminum.

"SET OF JELLO MOULDS. Entire set is made of fine, heavy aluminum.

"SELF-FILLER FOUNTAIN PEN. This fountain pen has a pocket clamp and a 14-carat gold point, with an Iridium tip that cannot wear out.

"I TRUST YOU. You have been selected from among many applicants as honest and trustworthy, to act as my selling agent in your territory. So start at once to sell your order and send remittance promptly. Your credit will then be good for future orders."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that it has definitely discontinued the advertising of premiums and promises hereinabove mentioned, and does not intend at this time to resume such advertising in the future. Respondent further stipulates and agrees that in the event it decides to resume such advertising again, the same will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that the quality of such premium offered will be accurately described. (Sept. 12, 1932.)

0348. Vendor Advertiser—"Gen Tone" Tonic.—Clifford Fears, trading as Margaret G. Stanley, vendor-advertiser, is engaged in selling an alleged tonic that would enable barren women to have babies, and in advertising represented:

"A BABY FOR YOU. If you are denied the blessing of a baby all your own and yearn for a baby's arms and a baby's smile, do not give up hope. Just write in confidence to Margaret G. Stanley, 818 Wyandotte St., Kansas City, Mo., and she will tell you about a simple home method that has brought sunshine to many."

and in printed folders and circulars, some 68 testimonial letters headed by the following caption:

"ARE BABY VOICES CALLING YOU? Every real woman yearns for a baby's arms and a Baby's smile. A baby of your very own. Why not This Happiness For You?"; whereas of the 68 testimonial letters printed, but 1 states that the writer is pregnant, and 4 that the writer has "gained her most ardent desire," the remaining 63 saying simply that they "like the medicine fine," "feel different," etc.

The Federal Trade Commission is informed by its medical advisers that an analysis of the ingredients contained in Gen-Tone shows said product to be incapable of producing the results claimed for it, and therefore holds such representations to be incorrect, exaggerated, and misleading.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale



of such commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that he will not represent said product as an effective or competent treatment for feminine sterility. (Sept. 12, 1932.)

0349. Vendor Advertiser—Treatments for Female Diseases.—A. C. Haysler, Jr., doing business as Dr. Southington Remedy Co., Kansas City, Mo., vendor-advertiser, is engaged in selling an alleged "Relief Compound" for female diseases and in advertising represented:

"LADIES I positively guarantee my great successful 'Relief Compound'. Safely relieves some of the longest, stubborn and unusual cases in three to five days.

"End Pain and Worry.

"\* \* \* They have safely relieved some of the most obstinate and abnormal cases in three to five days \* \* \* we do not believe that these choice treatments will ever disappoint in a single instance, where they are properly and faithfully used \* \* \*.

"There are thousands of women in all walks of life, married and single, who suffer each month from \* \* \* unnatural suppression of menstruation.

"\* \* \* a valuable 'Relief' Treatment to USE AT ONCE when the necessity arises one, two or three months from now, thus saving time and avoiding much trouble, worry and delay." when "in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others in that said statements import and imply that the use of said preparations will produce abortion, and said statements are further misleading in that none of the preparations is a competent treatment for suppressed menstruation."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That by inference or direct statement that use of any of said preparations will produce abortion;
- (b) That any of said preparations is a competent treatment for the relief of suppressed menstruation unless specifically limited to the known therapeutic properties of the ingredients;

- (c) That stubborn and abnormal cases can be relieved by the use of any of said preparations;
- (d) That the efficacy of any of said preparations is positively assured in all cases;
- (e) That the use of said treatment will never cause disappointment;
- (f) That the use of any of said treatments will relieve a woman from worry;

and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0350. **Vendor Advertiser—Body Brace.**—Natural Body Brace Co., Salina, Kans., vendor-advertiser, is engaged in selling a body brace, and in advertising represented:

“Overcomes female weakness.

“Relieves backache, curvatures, nervousness, constipation, after-effects of flu.

“Overcomes weakness and organic ailments of men and women.

“You should wear it: \* \* \*.

“If you have backache, \* \* \* spinal curvature or any incorrect posture.

“If you have \* \* \* indigestion, pains in the abdomen, bloating, unnatural thinness.

“If you have constipation, colitis, inflammation of the bladder, floating kidney or the usual kidney, bladder or liver trouble.

“If you have neuritis, or any nervous trouble, weak heart, palpitation from slight exercise or excitement, headache, pains between the shoulders, coldness, numbness, varicose veins, poor circulation, weakness of the lower limbs \* \* \*.

“If you have lung trouble.

“If you have naval or groin rupture.

“If you have \* \* \* ovarian trouble, whites, menstrual trouble—or any female weakness—painful or frequent passing of urine.

“If you want to be one hundred per cent efficient—one hundred per cent successful—one hundred per cent useful and happy—one hundred per cent in physical strength and good appearance—you should send us your order.

“Make up your mind, acquire correct figure, freedom from pain, good health \* \* \*.

“Costs nothing to try the Natural Body Brace.

“The Howard C. Rash Individual Health Service comes to you Free.

“You can be free of suffering.

"Now and in later life you can enjoy the blessings of comfort, good health and a perfect figure.

"Stop suffering.

"Health for you."

when in truth and fact said statements if considered alone might be misleading in that prospective purchasers might be led to believe that the wearing of such body brace would constitute a competent treatment for the various physical ailments mentioned, when such ailments in some instances could result from causes which might not be corrected by the wearing of said body brace.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That the wearing of said natural body brace constitutes a competent treatment for the following ailments, unless such statements shall be qualified in each advertisement, booklet or follow-up letter to indicate that said body brace is effective when such ailments are the result of incorrect posture, improperly supported abdomen, misplaced organs, weak back, weak spine, and/or strained muscles and/or ligaments:

1. Female weakness.
2. Backache.
3. Curvature of the spine.
4. Nervousness.
5. Constipation.
6. After-effects of the flu.
7. Organic ailments of men and women.
8. Indigestion.
9. Pains in the abdomen.
10. Bloating.
11. Unnatural thinness.
12. Colitis.
13. Inflammation of the bladder.
14. Floating kidney.
15. Kidney, bladder, or liver trouble.
16. Neuritis.
17. Nervous trouble.
18. Heart ailments.
19. Coldness.

20. Numbness.
  21. Varicose veins.
  22. Poor circulation.
  23. Weakness of the lower limbs.
  24. Lung trouble.
  25. Rupture.
  26. Painful or frequent passing of urine;
- (b) That by wearing said body brace one can acquire a correct figure, freedom from pain and suffering, or good health, unless such statements are qualified to indicate that such results may be expected when the incorrect figure, pain, suffering, or ill health is caused by incorrect posture, improperly supported abdomen, misplaced organs, weak back, weak spine and/or strained muscles and/or ligaments;
- (c) That by wearing said body brace one can become 100 percent efficient; 100 percent successful or 100 percent in physical strength;
- (d) That it costs nothing to try said natural body brace unless said statement is completely explained and qualified in direct connection by the further statement "purchase price will be refunded if not satisfied after thirty days' trial";
- (e) That said body braces are made to the individual measure of the purchaser or that they are made after the receipt of orders, unless such statements are true; and that at any time such statements shall no longer be true, that they will then be discontinued and eliminated from all advertisements, booklets, and follow-up letters;
- (f) That any health service is furnished free, unless it be explained that such health service is furnished to purchasers of a body brace without extra cost and that no reduction or allowance on the selling price of such body brace shall be made in lieu of the health service;
- and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0351. Vendor Advertiser—Animal Mange Treatment.—B. B. Bailey, advertiser-vendor, Malden, Mo., is engaged in selling a preparation for the treatment of animals afflicted with mange and in advertising represented:

"Bailey's Mange Medicine. The parasites that cause sarcoptic and most other mange conditions are killed quickly by Bailey's preparation. And it is effective in other skin ailments usually classed as eczema and the like"

“Stop Mange usually with only one application of Bailey’s Mange Medicine”

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others in that said preparation is not a competent treatment for all types of mange or all types of skin diseases.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said preparation is a competent treatment for mange, unless such representations are qualified to indicate the particular type of mange for which it is effective;
- (b) That said preparation is a competent treatment for any type of mange other than sarcoptic mange;
- (c) Generally that said preparation is a competent treatment for skin ailments;
- (d) That said preparation is a competent treatment for eczema;
- (e) That mange can easily be stopped with one application of said preparation;

and all representations and statements equivalent or similar thereto in form or substances; and also to cease and desist from describing, labeling, branding or otherwise designating same as a mange medicine unless such designation is qualified to indicate the particular type of mange for which it is an effective treatment. (Sept. 12, 1932.)

0352. Vendor-Advertiser—Perfume.—Mrs. E. B. Coons, trading as Wons Co., Los Angeles, Calif., vendor-advertiser, is engaged in selling a perfume under the trade name of “Love Drops” and in advertising represented:

“Love Drops. \* \* \* An enchanting powerful aroma with that alluring blend that stirs the soul of the rich and poor, old and young to surrender to its charms.”

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from describing, labeling, branding or otherwise designating

as "Love Drops" and from representing in advertisements or otherwise:

That said perfume can cause any one to surrender to its charms, and all representations and statements equivalent or similar thereto in form or substance. (Sept. 12, 1932.)

0353. **Publisher—Auto Light Deflector.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of auto accessories, particularly a light deflector alleged to make fast driving safe at night.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Sept. 12, 1932.)

0354. **Publisher—Booklet of Advertisers Offering Agency, Homework, and Similar Employment.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a booklet giving list of various advertisers offering agency, homework, and similar employment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Sept. 12, 1932.)

0355. **Advertising Agent—Female Hygiene Cones.**—An advertising agent prepared and placed for publication advertising copy alleged to contain false and misleading claims, statements, and representations for a vendor of suppository cones for female hygiene.

In a stipulation filed with and approved by the Federal Trade Commission this advertising agent admits preparing and placing for publication such advertising copy; disclaims any interest in the business of the advertiser or the publication of such advertising copy which he desires to defend before the Commission; and waives all right to be joined therein as respondent in proceedings instituted against the advertiser before the Commission; and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Sept. 12, 1932.)

0356. **Vendor Advertiser—Skin Cream.**—Dr. W. H. Bailey, operating as Bailey Laboratory, vendor-advertiser, Denver, Colo., is engaged in selling Rejuveno Cream, alleged to be effective in removing wrinkles and facial blemishes and in advertising represented:

(Picture of man's face)

**“WRINKLES AND FACIAL BLEMISHES REMOVED.**

A world famed facial specialist offers a home treatment for removing wrinkles, freckles and facial blemishes quickly and surely.

Send for his booklet. *The Social and Dollar Value of a Face.*” which statements in the opinion of the Federal Trade Commission have the capacity and tendency to cause erroneous impressions to the injury of the public and of competitors.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that he discontinued the advertising of said commodity prior to the year 1931, and has no present plans or intentions of resuming such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Sept. 19, 1932.)

0357. **Vendor Advertiser—Monograms.**—R. J. Alter, trading as Ralco Supply Co., and Ralco Monograms, Boston, Mass., vendor-advertiser, is engaged in selling monograms through agents, and in advertising represented:

“\$50.00 Weekly Easy, Applying Gold Initials on automobiles. No experience needed. \$1.45 profit every \$1.50 job. Free samples.

“All you can actually pay for is the material you use, which is not more than a sign painter pays for the gold leaf with which he makes his letters. The only difference is that the gold and other materials used in our method are already formed into perfect letters.

"Gold Decalcomania Transfer Letters and Emblems.

"Anyone can make up to \$10.00 a day without experience.

"You can earn from \$50.00 to \$75.00 a week from the beginning.

"\* \* \* these transfers are made of pure Oil Paints, Enamels, and Gold.

"Any one can make \$20.00 to \$25.00 a day applying initials to automobiles with our new transfer letters."

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said transfer letters and emblems are composed, in whole or in part, of gold or gold leaf;
- (b) That the probable profit to be derived by a person, from the purchase and resale of said transfer letters and emblems, is an amount in excess of the average profit made by other purchasers of said products under normal conditions over a reasonable period of time, as evidenced by competent records maintained by respondent;
- (c) That the probable maximum profit to be derived by a person from the purchase and resale of said transfer letters and letters is an amount in excess of the average profit made by a substantial number of other purchasers of said products under normal conditions over a reasonable period of time as evidenced by competent records maintained by respondent;

and all representations and statements equivalent or similar thereto in form or substance. (Sept. 19, 1932.)

0358. **Vendor Advertiser—Feminine Hygiene Preparations.**—Ernest E. Schneider, vendor-advertiser, trading as Snyder Products Co. and O. J. O. Laboratories, Chicago, Ill., is engaged in selling certain alleged antiseptic preparations for feminine hygiene designated

"S. P. Monthly Regulators

"S. P. Relief Compound

"O. J. O. Periodic Relief Compound

"S. P. Vaginal Suppositories, and

"S. P. Vaginal Antiseptic Jelly."

and in advertising represented:



"FEMININE HYGIENE. When delayed use S.P. Monthly-Regulators. Moves cases long overdue, many in 48 hours; used by doctors. Safe, harmless \* \* \*.

"WOMEN, WHY WORRY? about delayed periods from unnatural causes. For quick results use S. P. Monthly Regulators.

"LADIES can now depend on our new S. P. Relief Compound. It gives quick sure relief in most stubborn cases often in two to five days.

"Helps to keep Married Women healthy and Free from all worry. NO RISK.

"WOMEN, Don't Worry about delayed periods, etc.

"When delayed or irregular, for quick results use O. J. O. Periodic Relief Compound.

"O. J. O. Periodic Compound often moves (stubborn) cases long overdue in 48 hours.

"LADIES! End Your Worries. The S. P. Vaginal Suppositories cone shape have solved one of the greatest stumbling blocks of Feminine Hygiene; convenient to use anywhere at any time. Water not necessary. They give instant protection, destroying germ-laden accumulations \* \* \* no fuss, no bother \* \* \* just what you always wanted \* \* \* absolutely reliable, safe, harmless."

"LADIES! End Worry Now. \* \* \* They have ended much worry and brought much happiness to thousands.

"The modern scientific solution of women's oldest and most intimate Hygiene problems.

"Thousands of women have received remarkable (expected) results.

"\* \* \* our new S. P. Relief Compound. Use it when nature fails you. Banish fear.

"They are invaluable to relieve your mind and body of worry and pain.

"The ingredients of the S. P. Suppository have a powerful antiseptic and germ killing power \* \* \* at the same time will give the woman peace of mind.

"S. P. Vaginal Antiseptic Jelly \* \* \* relieves the mind of mental worries as well as the body of physical discomfort \* \* \* a powerful antiseptic and germ killer."

which representations appear to the Federal Trade Commission to be in whole or in part false or misleading.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of

and selling its said products in interstate commerce to cease and desist from representing in advertisements or otherwise anything indicating inferentially or otherwise that they are effective either as contraceptives or abortifacients or germicides, or that they will bring "sure" relief for anxious women.

Respondent further stipulates and agrees to cease and desist from stressing the thought of worry, anxiety or fear, of which these products are supposed to relieve women. It is further stipulated and agreed that respondent will discontinue the use of the word laboratories in connection with his trade names, unless and until such time as he does maintain an adequately equipped laboratory for the manufacture of his products. (Oct. 10, 1932.)

**0359. Vendor Advertiser—Puzzle Prize Contests.**—Beauville Parfumeurs, advertising as Everett Bowlsby, Des Moines, Iowa, advertiser-vendor, is engaged in selling toilet preparations, perfumes and cosmetics, and using a form of advertising to interest people, induce them to buy and sell goods to win large prizes, but misleading readers into believing that all that is required to win is to indicate a certain bag out of 18 portrayed with a dollar mark upon each to win a big prize in money or a Hudson 8-cylinder auto, whereas the solution of the problem or puzzle gets the solver nothing but his name on a mailing list where he is exposed to a flood of appealing mail to induce him to buy and sell the merchandise, and in advertising represented:

"CAN YOU SOLVE THIS PUZZLE. \$5,360.00 in Prizes

(Portraits of money bags with dollar marks upon each, and portrait of automobile).

"First Prize.

"Find The Money Bag that is Different.

"Here is an opportunity to win the most handsome and richest prize you ever dreamed of owning. There are 18 bags of gold pictured here representing the 18 cash prizes in gold we will award to winners. One of these bags is different. The difference may be in the bag, the marking, the \$ sign, or some other feature. Find the bag that is unlike the others. Mark an "X" over that bag and rush it to us quick. First prize is a Hudson "Eight"—or \$1200.00 in Gold (whichever you prefer.)

"WE ARE GIVING AWAY \$5,360.00—218 PRIZES.

"In this great puzzle contest feature. If your eyes are sharp, you may be the first to solve the puzzle correctly. Look closely. Examine each bag. They are all alike but one. Rush your answer. \$500.00 EXTRA in gold, for promptness.

"There is nothing to sell. Every prize guaranteed, and will be paid promptly. We will let you know immediately just how you came out. Just mark the bag that is different, tear out this ad,

and mail with your name and address. Think what it means if you win!

**"First Prize—HUDSON 8-Cylinder Coach Many Other Big Prizes**

"Hundreds of dollars in Gold offered in the many other big prizes for 2nd place, 3rd, 4th, etc. Everyone who really tries and qualifies receives a handsome reward, even if they do not win one of the bigger prizes. The most amazing friend-making contest, and the most liberal prizes to everyone we have ever announced. This Is Not a Magazine Contest.

**"\$500.00 SPECIAL PRIZE FOR PROMPTNESS; MAIL ANSWER QUICK.**

"In addition to the Hudson 'Eight' and other prizes, we will give \$500.00 in gold as a special prize for promptness, added to first prize. Mail your answer quick. Win the award of a lifetime and this wonderful cash prize too. Mark and mail at once with your name and address to EVERETT BOWLSBY, 305 West Second St., Dept. 138 Des Moines, Iowa".

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodities, and does not intend at this time to resume such advertising in the future; and that the sale of said commodities is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Oct. 10, 1932.)

**0360 and 0361. Publishers—Kitchen Utensils—Agents or Canvassers.**—Publishers, respectively, of a newspaper, and a magazine, of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of kitchen utensils to secure agents to sell them.<sup>1</sup>

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser of the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other

<sup>1</sup> Stipulation 0360 adds the words "from house to house."

agreement between the advertiser and the Commission of which they have notice. (Oct. 17, 1932.)

0362.—Department Store—Fat-Reducing Tablets.—A large department store in Washington, D.C., acting as distributor for the manufacturer, permitting the manufacturer of fat-reducing tablets to advertise them in the name of the department store and place a demonstrator in the store to sell them, has stipulated with the Federal Trade Commission as follows:

That the distributor is conducting a general retail department store in which it has been carrying and offering for sale the advertiser's product;

That said distributor has no interest in the business of said advertiser, or in the publication of advertisements for said advertiser which it desires to protect or defend before the Federal Trade Commission; and that as to any such interest that may exist or be charged to said distributor in the matter of said proposed complaint, it hereby waives any and all right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission;

That said distributor hereby waives its rights to be made party respondent to said proposed complaint against the advertiser herein named;

That both as to the Federal Trade Commission and the advertiser named herein, it waives any rights which may be adversely affected by any cease and desist order the Commission may hereafter make or issue upon said complaint against said advertiser;

and agrees to be bound by and observe the terms of any stipulation that may be made between the Commission and the advertiser as a means of terminating these proceedings, and also the terms of any cease and desist order that may be entered by the Commission herein against the said advertiser. (Oct. 17, 1932.)

0363. Vendor-Advertiser—"Allenru"—A rheumatic cure.—Alle-Rhume Remedy Co., Inc., Rochester, N.Y., advertiser-vendor, is engaged in selling "Allenru," an alleged effective remedy for rheumatism, and in advertising represented:

**"INEXPENSIVE PRESCRIPTION GUARANTEED TO END RHEUMATISM.**

"Thousands joyfully astonished at swift 48 hour relief.

"Progressive pharmacists will tell you that the popular big-selling prescription for rheumatism right now is Allenru—for 85 cents you can get a generous bottle from Hamilton Russell, Inc., or any up to date druggist.

"You can get it with an absolute guarantee that if it doesn't stop the pain—the agony—and reduce the swelling in 48 hours—your money back.

**"URIC ACID POISON STARTS TO LEAVE BODY IN 24 HOURS.**

"Out of your joints and muscles go the uric acid deposits that cause all your suffering—it's a safe, sensible, scientific formula—free from harmful or pain deadening drugs.

"The same absolute guarantee holds good for sciatica, neuritis and lumbago—quick, joyful relief—no more idle days—it removes the cause.

**"HOW MUCH WOULD YOU PAY TO BE RID OF RHEUMATIC PAINS IN 48 HOURS?**

"Would You Pay Ten Dollars? Would You Pay 85 Cents?

"Well: Here's a chance for you to be spry once more—to do your work cheerfully without one twinge of pain.

"Here's a positive guarantee that no rheumatism sufferer can afford to pass up—you can be free from agonizing rheumatism—and keep free from it.

"Get one 85 cent bottle of Allenru from—A—or any progressive druggist with the positive and distinct understanding that your pains and torture will all be gone in 48 hours or money back.

**"COST 85 CENTS TO PUT RHEUMATIC CRIPPLE BACK TO WORK AGAIN. NOW JOYOUSLY HAPPY.**

"While all his family looked on in astonishment and all his friends were amazed, one man took all the pain, swelling and agony from his tortured joints in 48 hours and did it with that famous rheumatic prescription known to pharmacists as Allenru—you can do the same.

"This powerful yet safe remedy is positively guaranteed to do this—its action is almost magical.

**"REMOVE THE CAUSE OF RHEUMATISM.**

**"NOT TILL THEN WILL YOU BE FREE FROM IT'S BLIGHTING CURSE.**

**"URIC ACID POISON—the cause of rheumatic agony starts to leave your body in 24 hours.**

**"THIS PRESCRIPTION GUARANTEED.**

"Think of it—how this old world does make progress—now comes a prescription which is known to pharmacists as Allenru and within 48 hours after you start to take this swift acting formula all pain, agony and inflammation has departed.

**"Drives Uric Acid Poison From Body—Then Out Goes RHEUMATISM. "You can't be permanently free from rheumatic pains, agony, twinges and swellings until every par-**

ticle of this uric acid that poisons the whole system has been expelled.

"You simply fool yourself when you take pain deadening drugs—they may bring relief from pain but

**THE CAUSE OF RHEUMATISM.** The cause of your agony—of your stiffness—of your violent inflammation—uric acid poison—stays right in your body—getting more deeply entrenched in your joints and sooner or later it will manifest itself again—and your next rheumatic attack may be worse than ever before.

"Now there's a prescription called Allenru that is safe yet so powerful that when you take it uric acid poisons start to pour out of your body in 24 hours—better still—

"In 48 hours pain, agony, and inflammation are gone.

\* \* \* you are ready for work again."

when in truth and in fact the statements and claims predicated upon the assumption that all rheumatism is caused by an excess of uric acid in the system is incorrect inasmuch as there are different types of rheumatism, some of which may have other or different causes than an excess of uric acid, and that said claims are predicated upon the further assumption that the uric acid solvent does more than relieve and even terminates and permanently ends the cause of rheumatism, which the Commission finds not to be the case.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That Allenru will end rheumatism in the sense that the word "end" is used to indicate a finality of cure;
- (b) That said preparation removes the cause of sciatica, or neuritis, or lumbago, or neuralgia unless qualified to state that it acts upon a condition of excessive uric acid which frequently is the cause of such ailments;
- (c) That by the use of Allenru one can be rid of rheumatic pains or free from agonizing rheumatism except in such cases of rheumatism as are due to excess uric acid or other circulating poisons, the elimination of which by the remedy would cause relief of irritation produced thereby;
- (d) That Allenru will remove the cause of rheumatism when due to other than an excess of uric acid or other circulating poisons; or that uric acid is the only cause of rheumatism;

- (e) That after taking other remedies which bring relief from pains one's "next rheumatic attack may be worse than ever before", or that "you simply fool yourself" by taking such other remedies;
- (f) That rheumatism goes out of the body when uric-acid poison is driven out, except such rheumatism as may have been the result of such excessive uric acid;
- (g) That you can't be permanently free from rheumatic pains, etc. (when the same are not caused by excessive uric acid), until every particle of such uric acid has been expelled from the system; or that the expelling of uric acid will, inferentially or otherwise, permanently free one from rheumatism and rheumatic pains;
- (h) That Allenru is an effective or competent treatment for all kinds of rheumatism;

and all representations and statements equivalent thereto in form or substance. (Oct. 24, 1932.)

0364. Vendor-Advertiser—Antiseptic.—Beggs Manufacturing Co., Chicago, Ill., vendor-advertiser, is engaged in selling Knoxit Prophylactic Liquid as an antiseptic for local infectious diseases and a germicide in venereal diseases and in advertising represented:

"A Mild Antiseptic to be used as a Hygienic Precaution against Contraction of Local Infectious Diseases.

"To Destroy Infectious Germs.

"For men who need a preparation for the destruction of germs which cause venereal diseases.

"Knoxit (Prophylactic) Liquid for eradication of the germs and for prompt relief.

"Hemorrhoids.

"Sore Throat.

"Nasal Discharge.

"Cuts, Wounds, Sores, Ulcers."

when in truth and in fact said statements are deemed by the Federal Trade Commission to be incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading; and specifically, stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the said preparation is a preventative against the contraction of local infectious diseases;

- (b) That said preparation is a prevention against the contraction of venereal diseases;
- (c) That said preparation will destroy or eradicate infectious germs or germs which cause venereal diseases;
- (d) That said preparation is a competent treatment for hemorrhoids, sore throat, nasal discharge, cuts, wounds, sores, or ulcers;

and all representations and statements equivalent or similar thereto in form or substance.

and also agrees to cease and desist from describing, labeling, branding, or otherwise designating Knoxit as a prophylactic. (Oct. 24, 1932.)

0365. **Vendor Advertiser—Pharmaceutical Compound for Female Hygiene.**—C. O. Myers, trading as Myco Co., Kansas City, Mo., vendor-advertiser, is engaged in selling "Favorite regulator" and in advertising represented:

"FEMININE HYGIENE. When Delayed Use Favorite Regulators, get quick relief; Regular \$2 double strength, with valuable directions, only \$1 for a limited time. Trial size 25¢. Myco, Dept. 111, 3235 South Benton, Kansas City, Mo."

and in follow-up letters, folders and circulars:

"Their continued successful results made us desire to extend their usefulness to the many ANXIOUS suffering ladies everywhere.

"Un-natural delay or interruption of the menstrual periods is often a cause of great mental ANXIETY, nervousness and pain.

"If your periods cause you ANXIETY, pain, worry, be sure to get a box, at once.

"Have been used MOST successfully by many an ANXIOUS woman.

"Afterwards use 'Dry Douche' Capsules and stop worrying." which representations the Federal Trade Commission deems misleading to the injury of the public and of competitors, in that the text indicates to readers that this product is an effective contraceptive or abortifacient, whereas the formula submitted to medical authorities discloses that the preparation is composed of ingredients which bear no relationship to feminine hygiene, nor is it entitled to the classification of a contraceptive or an abortifacient, since it cannot be depended upon to prevent conception or to produce abortion.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from describing, labeling, branding, or designating same either



inferentially or otherwise as an effective contraceptive or abortifacient. (Oct. 24, 1932.)

0366. Vendor Advertiser—Eyelash Grower and Treatment.—Gordon & Gordon, Ltd., a corporation trading as Lucile Young, Chicago, Ill., vendor-advertiser, is engaged in selling a preparation for the treatment of eyebrows and eyelashes and in advertising represented:

“30-day method for new eyelash and eyebrow growth.

“Today it is the only method of its kind to be had at any price.

“Grow eyelashes and eyebrows like this in 30 days.

“Now if you want long, curling, silken lashes, you can have them.

“No matter how scant the eyelashes and eyebrows, I will increase their length and thickness in 30 days.

“It is new growth.

“Proved beyond the shadow of a doubt. Over ten thousand women have tried my amazing discovery, proved that eyes can now be fringed with long, curling, natural lashes, and the eyebrows made intense, strong, silken lines.”

when in truth and in fact said statements are considered by the Federal Trade Commission to be incorrect in certain respects and exaggerated and misleading in others.

The respondent also admits that it has distributed to prospective purchasers documents purporting to be clippings of news articles published in newspapers or magazines when in truth and in fact said articles were not so published as news articles, and the publication of such articles was paid for by respondent.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said preparation constitutes, or is a part of, a 30-day method for growing eyelashes or eyebrows;
- (b) That by the use of said preparation new eyelashes or new eyebrows can be grown;
- (c) That by the use of said preparation a person can have long curling silken lashes;
- (d) That beneficial results can be obtained from the use of said preparation within any definite period of time;
- (e) That said preparation is the only method of its kind;

and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees that it will cease and desist from:

- (a) Distributing to prospective purchasers any document purporting to be clippings or news articles published in newspapers or magazines unless such statement shall have been actually published as a news article;
- (b) Causing any statement to be published in a magazine or newspaper as a news article when the publication thereof is paid for. (Oct. 24, 1932.)

0367. **Vendor-Advertiser—Liniment.**—Midwest Drug, Inc., Chicago, Ill., vendor-advertiser, is engaged in selling "Muscle-tone" alleged capable of stopping rheumatic pains quickly, and in advertising represented:

"RHEUMATIC PAINS STOP. In 7 to 10 Minutes. It is easy now to end rheumatism pains. Seven to 10 minutes will prove it to you. \* \* \* Medical science seems at last to have found the way to conquer \* \* \* rheumatism, lumbago, sciatica.

"Muscle-tone Your Muscles with Muscle-tone, when you are tired. Muscle-tone them, when you are tortured with rheumatism, neuralgia, lumbago, sciatica. Stop pain in 7 to 10 minutes.

"Pains stop completely—almost instantly.

"The medical principle behind muscle-tone is to neutralize accumulated toxins.

"Relieves blood congestion.

"Rheumatism pains can be stopped only one way.

"Puts new strength into weak tissues.

"No more pain—no more crushing misery.

"Muscle-tone is guaranteed to do the work in even the most severe cases.

"Get relief in 7 to 10 minutes.

"Heals Eruptions.

"To relieve pain caused by rheumatism, sciatica or any other muscular pain.

"Get rid of stiff joints.

"Relieve the pain instantly.

"Muscle-tone rubbed in rubs pain out."

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others in that many of the claims made exceed the known therapeutic properties of the said medicinal preparation.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and

selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said medicinal preparation is a competent treatment for rheumatism, lumbago, sciatica, blood congestion or stiff joints;
- (b) That by the use of said medicinal preparation pains can be relieved instantly in 7 to 10 minutes or any definite length of time;
- (c) That said medicinal preparation will neutralize accumulated toxins or put strength into tissues;
- (d) That by rubbing in said medicinal preparation pains can be "rubbed out";
- (e) That said medicinal preparation is efficacious in the most severe cases;
- (f) That said medicinal preparation is competent to heal eruptions;
- (g) That said medicinal preparation is a tonic for muscles;
- (h) That a person using said medicinal preparation will have no more pain or no more misery;

and all representations and statements equivalent or similar thereto in form or substance. (Oct. 31, 1932.)

0368. **Publisher—Pants, hosiery, frocks, pile remedy, kitchen utensils, treatment for leg sores, washing machine, and prize-name advertisement.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain certain false and misleading statements, claims, and representations for the manufacturer and vendor of pants, hosiery, frocks, pile remedy, kitchen utensils, treatment for leg sores, washing machine, and prize-name advertisement to secure subscribers.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertisers or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertisers before the Commission, and waives any such right which may be adversely affected by any stipulations of which it shall have due notice hereinafter entered into by and between the Federal Trade Commission and the advertisers aforesaid, relating to the subject matter of said proposed complaints. (Oct. 31, 1932.)

0369. **Publisher—Kitchen Utensils—Agents or Canvassers.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manu-

facturer and vendor of kitchen utensils and seeking agents to sell them from house to house.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 31, 1932.)

0370 and 0371. **Publishers—Correspondence Courses in Seamanship.**—Respondents<sup>1</sup> publishers of magazines of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a correspondence course in seamanship.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or agreement between the advertiser and the Commission of which they have notice. (Oct. 31, 1932.)

0372. **Publisher—Hair Dye, Medicinal Herbs, and Salve for Sores and Ulcers.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of hair dye, medicinal herbs and salve for sores and ulcers.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission. (Oct. 31, 1932.)

<sup>1</sup> The stipulations appear to be identical, except for the fact that respondent in stipulation 0371 apparently did not bind itself to the provisions included in this stipulation, namely, to agree to observe and abide by any cease and desist order or stipulation, of which respondent has notice.

0373. **Publisher—Kitchen Utensils, Creams, Powders, Cosmetics, etc.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of kitchen utensils, and creams, powders, cosmetics, etc.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission. (Oct. 31, 1932.)

0374. **Department Store—Fat-Reducing Tablets.**—A large department store in Washington, D.C., acting as distributor for the manufacturer, permitting the manufacturer of fat-reducing tablets to advertise them in the name of the department store and place a demonstrator in the store to sell them, has stipulated with the Federal Trade Commission as follows:

That the distributor is conducting a general retail department store in which it has been carrying and offering for sale the advertiser's product;

That said distributor has no interest in the business of said advertiser, or in the publication of advertisements for said advertiser which it desires to protect or defend before the Federal Trade Commission; and that as to any such interest that may exist or be charged to said distributor in the matter of said proposed complaint, it hereby waives any and all right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission;

That said distributor hereby waives its rights to be made party respondent to said proposed complaint against the advertiser herein named;

That both as to the Federal Trade Commission and the advertiser named herein, it waives any rights which may be adversely affected by any cease and desist order the Commission may hereafter make or issue upon said complaint against said advertiser; and agrees to be bound by and observe the terms of any stipulation that may be made between the Commission and the advertiser as a means of terminating these proceedings, and also the terms of any cease and desist order that may be entered by the Commission herein against the said advertiser. (Nov. 7, 1932.)

0375. **Vendor Advertiser—Treatment for Bladder Weakness.**—F. L. McWethy, Marshall, Mich., vendor-advertiser, is engaged in

selling the so-called "McWethy's Home Treatment" for weak or irritated bladders, and in advertising represented:

"CAN YOU SLEEP ALL NIGHT ?

"Or Must You Get Up Frequently By Reason of Bladder Trouble?

"If you are kept awake half the night and get up frequently on account of irritation and weakness of the bladder, or if you are suffering from prostatic trouble, write me at once for a generous free trial of my home treatment for the relief of bladder weakness. I send it free so you can try it in your own case and know how quickly it relieves the irritation and stops the getting up at nights. This trial treatment alone will bring you such wonderful relief you will be delighted beyond words.

"McWethy's Home Treatment for weak or irritated bladders resulting from kidney and prostate trouble.

"There are always causes effecting troubles like yours which must be removed and this frequently takes time. The Home Treatment is proving effective in many cases of long standing, and I see no reason why you can not derive the same splendid results, if you will persist in the use of the medicine.

"So many reports of cures have been coming in the past two weeks from my customers from all over the United States and Canada that I sometimes feel I do not recommend the medicine half so high as I should.

"No matter whether caused by enlarged prostate gland or a deranged condition of the kidneys, the Home Treatment is designed to relieve this condition. (To wit: Weakened condition of the bladder.)

"I induced a number of my acquaintances to try it, some of them in such an extremely bad condition they could hardly pass water without artificial means, and the results were so wonderfully satisfactory that I at once arranged for the manufacture of the medicine.

"There is always a cause for everything, and a successful treatment should not only relieve the trouble, but should eliminate as far as possible the cause.

"Bladder irritations arise from various sources, a very common one being an acid and rheumatic condition of the blood, but whatever the cause, you can not overestimate the advantage to be gained by giving prompt attention to the trouble.

"The retention of urine causes it to decompose. It then backs up to the kidneys and is a frequent cause of interstitial nephritis or Bright's disease.

"As one who realizes that experience is a stern teacher, I urge you to give proper attention to your ailment before it is too late.

"No matter what the causes are, you want relief quickly. My Home Treatment is prepared to act directly on the seat of your trouble, and you will not have to use the medicine very long to prove its effectiveness.

"The object all the way through is not only to relieve the existing local conditions, but as far as possible relieve systemic causes of the trouble.

"To everyone afflicted with a disordered condition of the bladder, I say, do not let another day go by, \* \* \* but order a full treatment at once.

"McWethy's Combined Home Treatment is not only for the bladder, but the kidneys and bowels.

"Why put up with your trouble longer. Others were told their case was incurable. yet after all, see what they say about the medicine after giving it a good fair trial.

"I am pleased to tell you that I am cured of all the old trouble.

"I feel like I am entirely cured.

"I think I am cured of the 45 years malady.

"I intend to continue your treatment until I have effected a complete cure.

"I thought I would write and tell you that your Home Treatment cured me.

"Your Home Treatment has made a final cure of me.

"McWethy's Home Treatment for kidney and bladder disorder is all that he claims it to be."

which representations are held by the Federal Trade Commission to be exaggerated and misleading to the injury of the public and of competitors in that said medicine is merely a palliative or symptomatic treatment to relieve the irritated condition of the bladder which causes frequent urination; that as to prostatic trouble, by the consensus of medical opinion there is no medicine to be taken internally which will attack the trouble itself or reach this ailment;

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said home treatment is an effective remedy for any bladder trouble other than irritation of the bladder;
- (b) That it is a treatment for prostatic trouble of any kind;
- (c) That it is a treatment for kidney trouble;
- (d) That it is a treatment for the bowels;

- (e) That it reaches any of the underlying causes of either bladder or kidney or prostatic or bowel troubles;
- (f) That it will "cure" or "rid" one of any such ailments;
- (g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidneys.
- (h) That it can or should eliminate the cause of bladder or other organic troubles;
- (i) That it will have any effect upon an acid or rheumatic condition of the blood causing bladder irritations;
- (j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;
- (k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;
- (l) That the home treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;
- (m) That it relieves systemic causes of the trouble;
- (n) That it is an effective treatment for a disordered condition of the bladder or is in fact any more than a palliative for irritation of the bladder;

and all representations and statements equivalent thereto in form or substance. (Nov. 7, 1924.)

0376. **Vendor Advertiser—Female Hygiene Tablets.**—Myrtle Caldwell, trading as Flash Remedy Co., Chicago, Ill., is engaged in selling "Flash Compound Tablets"; "Flash Monthly Regulating Compound"; and "Special Flash Combination Treatment" for female troubles, vendor-advertiser, and in advertising represented:

"WOMEN WHY WORRY. When delayed use Flash Compound Tablets. Guaranteed safe and harmless.

"SPECIAL FLASH COMBINATION TREATMENT. For The Treatment Of All Morbid Conditions Of The Menstrual Function.

"This Treatment does not act as an ecboic, but acts almost as a specific in nearly all prolonged and morbid conditions of the Menstrual Function.

"FLASH MONTHLY REGULATING COMPOUND for WOMEN, the only regulator known that will safely relieve some of the longest and most abnormal cases in 24 to 48 hours."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the



sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That a woman using respondent's product may cease to "worry";
- (b) That said tablets or regulating compound constitute the "only regulator known" that will "safely", or otherwise, relieve "longest and most abnormal cases" of delayed menstruation, within 24 or 48 hours or any other specified time;
- (c) That this treatment acts as "almost a specific" in any form of female weakness, or inflammation, or congestion of the vagina, womb, or ovaries;
- (d) That said treatment (with properties of but a simple emmenagogue) provides an effective relief for all cases however caused, of  
Nervous, periodical headaches, or Soreness of the womb, or Painful cramping periods, or Abnormally profuse, fetid, scanty, absent, delayed, or suppressed monthly flow;
- (e) That a woman may, by the aid of respondent's remedies, "cure" herself of anything;
- (f) That said combination treatment will "relieve the very longest, most obstinate and abnormal cases of unnatural suppression of the menses", or that it is a competent treatment for "all morbid conditions of the menstrual function", or any of them;

and all representations and statements equivalent thereto in form or substance. (Mar. 7, 1932.)

0377. Vendor Advertiser—Constipation Device.—The -----, vendor-advertiser, is engaged in selling a mechanical device for the relief of constipation and cleansing the colon and lower intestines, and in advertising, represented:

That many suffer from delayed elimination that often causes headaches, fatigue, mental sluggishness; skin blemishes, colds and countless other ills due to the absorption of poisons in the system, when in fact some of the representations made are exaggerated and misleading.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That 9 out of 10 persons (or any other proportion not definitely ascertained by reliable statistics) suffer from intestinal stasis;
- (b) That absorption of poisons from the intestines is generally the cause of:
1. Headaches.
  2. Mental sluggishness.
  3. Susceptibility to colds.
  4. Sleeplessness.
  5. Digestive distress.
  6. General debility.
  7. Hardened arteries.
  8. High blood pressure.
  9. Rheumatism.
  10. Arthritis.
  11. Sciatica.
  12. Liver disorders.
  13. Kidney disorders.
  14. Catarrh.
  15. Asthma.
  16. Consumption or tuberculosis.
  17. Heart disease.
  18. Premature old age.
  19. Epilepsy.
  20. Melancholia.
  21. Ulcerated stomach.
  22. Hemorrhoids.
  23. Varicose veins.
  24. Appendicitis.
  25. Bright's disease.
  26. Anemia.
- (c) That the absorption of poisons from the intestines is the generic cause of
1. Premature old age.
  2. Rheumatism.
  3. High blood pressure.
- (d) That the use of said mechanical device is a competent treatment for the pathological conditions mentioned in paragraphs (b) and (c);
- (e) That said mechanical device is a sure means of ridding the system of poisons;
- (f) That 1,000,000 men and women (or any other number not definitely ascertained by reliable statistics) have rewon health by internal bathing;

- (g) That flushing the lower intestines is the obvious way to get a new physical start in life;
- (h) That the man and woman of today is but fifty percent efficient;
- (i) That by the use of said mechanical device intestinal clogging can be eliminated almost overnight;
- (j) That by the use of said mechanical device the worst case of constipation can be corrected immediately;
- (k) That obesity and constipation are allies or that one is seldom found without the other;
- (l) That cleansing the intestines will cause one to become slim;
- (m) That by the use of said mechanical device fat can be washed away;
- (n) That the use of said mechanical device is the only safe or sane method of personally thoroughly flushing the colon;
- (o) That said mechanical device is needed by
  1. All persons who are subject to headaches, are irritable, inclined to worry, or be nervous and who have difficulty sleeping;
  2. All persons who are susceptible to colds and diseases;
  3. All persons who do not respond readily to medical treatment;
  4. Persons who have chronic complaints;
  5. Persons suffering from mysterious maladies which do not yield to medical treatment;
- (p) That said mechanical device generally attacks the origin and cause of disease;
- (q) That said mechanical device will last for 10 to 15 years, or any length of time in excess of that indicated by respondent's records to be the average life of said device;

and all representations and statements equivalent or similar thereto in form or substance. (Nov. 7, 1932.)

0378. **Publisher—Hair Dye.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a hair dye.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement

between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0379. **Publisher—Correspondence Course in Hypno-Therapy.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a correspondence course in hypno-therapy claiming to teach hypnotism by mail.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0380. **Publisher—Pep Pills.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of pep pills for the old to rejuvenate them, etc.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0381. **Publisher—Hypnotism Book.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a book on hypnotism.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in

proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0382-0388. **Publishers—Books of Instructions on Sea-going Positions.**—Respondents<sup>1</sup> publishers of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a book of instructions in the duties of various positions on ships and the officials to apply to for position.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Nov. 7, 1932.)

0389. **Publisher—Hair Dye and Medicinal Herb.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a hair dye and a vendor of medicinal herbs.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission. (Nov. 7, 1932.)

0390. **Publisher—Kitchen Utensils—Agents or Canvassers.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of kitchen utensils and seeking agents to sell from house to house.

<sup>1</sup> The various stipulations appear to be identical, except for the fact that respondent in 0382 is set forth as a publisher of four magazines, of wide interstate circulation, etc., whereas the other respondents are each set down as a publisher of a magazine, of wide interstate circulation, etc., and respondent in stipulation 0385 apparently did not bind itself to the provisions included in the other stipulations, namely, to agree to observe and abide by any cease and desist order or stipulation, of which respondent has notice.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission. (Nov. 7, 1932.)

0391. **Publisher—An Everlasting Match.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a device alleged to be an everlasting match.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0392-0395. **Publishers—Physical Culture Courses by Correspondence.**—Respondents,<sup>1</sup> publishers of magazines of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a physical culture course by correspondence.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertisers before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Nov. 7, 1932.)

0396. **Publisher—Fat-Reducing Tablets.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements,

<sup>1</sup> The various stipulations appear to be identical except for the fact that respondent in 0393 is set forth as a publisher of 2 magazines.

claims, and representations for the manufacturer and vendor of tablets alleged to reduce fat and sold through department stores.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0397. **Publisher—Perfumed Beads and Costume Jewelry.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of perfumed beads and costume jewelry.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (No. 7, 1932.)

0398. **Publisher—Book of Instructions on Sea-Going Positions.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a book of instructions in the duties of various positions on ships and the officials to apply to for position.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agree-

ment between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0399. **Publisher—Hair Dye.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a dye alleged to end gray hair and restore former youthful color.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 7, 1932.)

0400. **Vendor-Advertiser—Rheumatism Oil.**—Gold Medal Haarlem Oil Corp., Brooklyn, N.Y., vendor-advertiser, is engaged in selling Gold Medal Haarlem Oil Capsules for Rheumatism, and in advertising represented:

**“GROW YOUNGER.** It is said ‘A man is as old as his kidneys.’ Invigorate your kidneys so they remove more of the poisons which slow you up, and see if you don’t feel more vital. To do this take Gold Medal Haarlem Oil Capsules. For 236 years this fine, old preparation has been widely prescribed for this very purpose—the best proof that it works. 35¢ & 75¢. Start now to grow younger with Gold Medal Haarlem Oil Capsules.

**“RHEUMATISM.** When the kidneys are not active enough, uric acid settles in the joints and tissues. Pain results. To end this trouble try drinking plenty of water and taking Gold Medal Haarlem Oil Capsules. For 236 years, this fine, old preparation has been widely prescribed for just this purpose. That its popularity has endured so long is the best proof it works. 35¢ & 75¢.

**“KIDNEY TROUBLE.** If you feel run down, or suffer from pains in the back or legs; if you have circles under your eyes or are troubled with rheumatism, lumbago or neuralgia, then your kidneys may be at fault. Don’t wait for the trouble to become serious, but start now to take Gold Medal Haarlem Oil Capsules. During 236 years this fine, old preparation has helped millions. 35¢ & 75¢.

**“WOMEN MADE YOUNG.** Bright eyes, a clear skin and a body full of youth and health may be yours if you will keep



your system in order by taking Gold Medal Haarlem Oil Capsules. The world's standard remedy for kidney, liver, bladder and uric acid troubles, the enemies of life and looks. In use since 1696. All druggists, 35¢, 75¢, \$1.50.

"FREE. A generous sample, free, if you print your name and address across this advertisement and mail it to Department—GOLD MEDAL HAARLEM OIL COMPANY, 220 36th St., Brooklyn, N.Y.

"Look for the name Gold Medal on every box, and accept no substitutes."

When in truth and in fact some of said statements are incorrect in certain respects and exaggerated and misleading in others in that:

Those active principles of the medication, oil of turpentine and oil of amber, while of stimulant diuretic nature, are not specific to the treatment of rheumatism except by increasing elimination via the kidneys thus reducing excess of uric acid and other circulating poisons in the blood and other tissues, and thereby affording relief from rheumatic symptoms caused by presence of such excess as may occur in rheumatic or gouty disease.

That no constituent of the remedy possesses any tonic or rejuvenating therapeutic value, hence any exaggerated claim of restored youthfulness must be false and claim to invigoration must be based entirely upon such feelings of invigoration or renewed youth as naturally come to a body which relieved of a burden of ills, feels renewed life and ambition because of such relief.

That the linseed oil constituent of the prescription while demulcent and healing in its localized effect upon irritated bladder membranes, has no therapeutic value as a rejuvenating tonic, nor is it of any known value in rheumatism.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the remedy is of utility in, or a cure of kidney disease except as the diuretic, demulcent, or antiseptic values possessed by the remedy are of value in relieving symptoms or relieving functional kidney derangements commonly referred to by the public as kidney trouble;
- (b) Claims as to restoration of youth except as the indicated use of the remedy may unburden the body of ills in which the

remedy is effective and thereby promote a feeling of youth consistent with a body relieved of such ills;

- (c) That the remedy is a cure for the disease rheumatism, or will stop, end, or conquer the disease rheumatism in sense of conveying to the public mind finality of result; inasmuch as the therapeutic virtue of the remedy in rheumatic trouble appears to be restricted to relief of such rheumatic symptoms as are caused by retention of an excess of uric acid, and other circulating poisons which the stimulant, diuretic virtues of the remedy assist to remove from the system;

and all representations and statements equivalent thereto in form or substance. (Nov. 14, 1932.)

0401. **Vendor-Advertiser—Constipation Cure.**—Philip Welsh, Los Angeles, Calif., vendor-advertiser, is engaged in selling courses of instruction pertaining to health and diet entitled “The Natural Way to Cure Constipation” and “The 7 Essentials of Health”, and in advertising represented:

“The Natural Way to Cure Constipation.

“If you overlook ANY ONE of the 7 Essentials you cannot have LASTING health.

“If you have tried many things without success and still have your ailment, it is a sure sign that you have never applied ALL of the 7 essentials.

“Do you know how to ABSOLUTELY stop ALL TOOTH decay and at the same time stop ALL BODILY decay?

“YOU WILL LEARN how to free yourself from sickness \* \* \*.

“You will learn how to make the hair grow—strengthen the eyes—do away with glasses, improve your hearing and overcome nervousness.

“You will learn the TRULY NATURAL WAY to treat the following ailments:

“Adenoids, ague (chills and fever), anemia, arthritis, asthma, blood disorders, bronchitis, Bright’s disease, cancer, colds, colitis, catarrh, ear disorders, female discharges, foot troubles, gall stones, halitosis, hay fever, headaches, hemorrhoids, high blood pressure, influenza, insomnia, kidney trouble, leucorrhea, low blood pressure, malaria, masturbation, mastoids, neuralgia, neuritis, nervousness, pneumonia, pyorrhea, piles, rheumatism, senility, sexual disorders, sinus trouble, skin diseases, tonsilitis, tooth decay, tuberculosis, tumor, ulcers of stomach, ulcers of intestines, varicose veins, venereal diseases, yellow jaundice.”

when in truth and in fact said statements are considered by the Federal Trade Commission to be incorrect in certain respects and exag-

gerated in others and are considered by the Federal Trade Commission to have the capacity and tendency to mislead and deceive the purchasing public into buying said courses of instruction.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the instructions contained in either of said courses is the natural way to cure constipation;
- (b) That a person cannot have lasting health if anyone of the essentials entitled "The 7 Essentials of Health" is overlooked;
- (c) That the presence of any physical ailment is an indication that the person has not applied all of the essentials contained in the course entitled "The 7 Essentials of Health";
- (d) That by following the instructions contained in the course entitled "The 7 Essentials of Health" a person can
  1. Stop all tooth decay.
  2. Stop all bodily decay.
  3. Free himself from sickness.
  4. Make the hair grow.
  5. Straighten the eyes.
  6. Do away with glasses.
  7. Improve the hearing.
  8. Overcome nervousness.
  9. Attain normal weight;
- (e) That the instructions contained in the course entitled "The 7 Essentials of Health" are competent treatments for the following ailments:

Adenoids, ague (chills and fever), anemia, arthritis, asthma, blood disorders, bronchitis, Bright's disease, cancer, colds, colitis, catarrh, ear disorders, eczema, eye disorders, female discharges, foot troubles, gall stones, halitosis, hay fever, headaches, hemorrhoids, high blood pressure, influenza, insomnia, kidney trouble, leucorrhoea, low blood pressure, malaria, masturbation, mastoids, neuralgia, neuritis, nervousness, pneumonia, pyorrhoea, piles, rheumatism, senility, sexual disorders, sinus trouble, skin diseases, tonsillitis, tooth decay, tuberculosis, tumor, ulcers of intestines, varicose veins, venereal diseases, yellow jaundice

and all representations and statements equivalent or similar thereto in form or substance. (Nov. 14, 1932.)

0402. **Publisher—Salve.**—The publisher of two magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of salve for old sores and ulcers.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 14, 1932.)

0403. **Publisher—Hair Dye.**—The publisher of two magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of hair dye.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 14, 1932.)

0404. **Publisher—Pictures.**—The publisher of two magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of pictures.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement.

between the advertiser and the Commission of which it has notice. (Nov. 14, 1932.)

0405. **Publisher—Kitchen Utensils—Agents or Canvassers.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of kitchen utensils, and seeking agents to sell the same from door to door.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 14, 1932.)

0406. **Publisher—Razor Sharpening Device.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a new device to sharpen razors, alleged to revolutionize shaving comfort, etc.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 14, 1932.)

0407. **Publisher—Can Opener and Kitchen Utensils.**—The publisher of a woman's magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a can opener and other kitchen utensils.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Com-

mission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 21, 1932.)

0408. **Publisher—Rare Coins and Stamps.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of rare coins and stamps.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 21, 1932.)

0409. **Publisher—Nasal Antiseptic.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a nasal antiseptic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publications of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 21, 1932.)

0410. **Publisher—Tooth Polish.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of tooth polish paste.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 21, 1932.)

0411, 0412. **Publishers—French Periodic Capsoloids; French Gland Tablets; French Antiseptic Cones; Radex Vaginal Jelly; and Capsoloids for Reducing Weight.**—The publishers of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of French Periodic Capsoloids; French Gland Tablets; French Antiseptic Cones; Radex Vaginal Jelly; and Capsoloids for reducing weight.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Nov. 28, 1932.)

0413, 0414. **Publishers—Antiseptics for Feminine Hygiene.**—The publishers of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of antiseptics for feminine hygiene.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agree-

tion of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

**0421. Publisher—Physical Culture by Correspondence Courses.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of correspondence courses in physical culture.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

**0422-0424. Publishers—Bunion Treatments.**—Respondents, publishers of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of bunion treatments.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Dec. 12, 1932.)

**0425. Publisher—Physical culture by Correspondence.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of correspondence courses in physical culture.



In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0426. **Publisher—Cement for Mending.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of cement for mending.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission, and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0427. **Publisher—Physical Culture by Correspondence.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of correspondence courses in physical culture.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission, and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0428. **Publisher—Kitchen Utensils.**—The publisher of three magazines of wide interstate circulation printed, published, and circulated

advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of kitchen utensils seeking agents to sell from door to door.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission, and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0429. **Publisher—Cement for Mending.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of cement for mending.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0430. **Publisher—Physical Culture by Correspondence.**—The publisher of two magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of correspondence courses in physical culture.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agree-

ment between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0431. **Publisher—Catarrh Treatment.**—The publisher of a midwest daily newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an alleged remedy for catarrh, colds, sinus troubles, and kindred ailments.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0432. **Publisher—Flesh Building Cream and Fat Reducing Cream.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a flesh building cream and a fat reducing cream.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0433. **Publisher—Hair Dye.**—The publisher of two magazines of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of hair dye.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent

in proceedings instituted against the advertiser before the Commission and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

**0434. Publisher—Polishing Cloths.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of polishing cloths.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements, disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued, and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

**0435. Publisher—Stomach Tablets.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of stomach tablets.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements, disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued, and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

**0436. Publisher—Dresses—Canvassing Agents.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of dresses—seeking agents to sell.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertise-

ments, disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued, and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0437. **Publisher—Specific for Leg Sores and Leg Troubles.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a specific for leg sores and leg troubles.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements, disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued, and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 12, 1932.)

0438, 0439. **Publishers—Flesh Building Creams and Fat Reducing Creams.**—Respondents<sup>1</sup> publishers of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of a flesh-building cream and fat-reducing creams.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued, and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Dec. 12, 1932.)

<sup>1</sup> The stipulations appear to be identical, except for the fact that respondent in 0439 is set forth as a publisher of 2 magazines.

0440. Vendor Advertiser—Medicated Salve for Old Sores and Skin Ulcers.—George J. Masur, trading as George J. Masur Co., St. Louis, Mo., vendor-advertiser, is engaged in selling Masur's Skin Ulcer Salve, and in advertising represented:

“OLD SORES. Masur's Skin Ulcer Salve does wonders. If you have an old sore that seems not to heal send for our free trial order.

“\* \* \* if you have had this trouble for some time and want to get rid of it, you will have to give Masur's Skin Healing Salve a fair chance. It should bring results if our directions are followed.

“Apply as directed and you are almost certain of good results.” when in truth and in fact said statements are considered by the Federal Trade Commission to be exaggerated and misleading.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity and does not intend to resume such advertising in the future; and that the sale of said commodity will be limited to the filling of unsolicited orders. (Dec. 12, 1932.)

0441. Vendor Advertisers—Self-Locking Gas Tank Top—Canvassing Agents.—H. Schneiderman and M. A. Berman, copartners trading as the Thrifty Products Co. and advertising under the name of J. Betmoll, Mgr., Chicago, Ill., are engaged in selling self-locking gas tank tops and seeking agents to sell them and in advertising represented:

“Self locking gas tank top pays up to \$10 a day. Every motorist a red-hot prospect.”

which representation the Federal Trade Commission deems exaggerated and misleading having the capacity and tendency to cause erroneous impressions to the injury of the public and of competitors in that the reader is led to believe that the amount indicated is regularly earned by at least a substantial number of respondents' agents, whereas respondents have not produced figures to establish such fact.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) As probable earnings of prospective agents or sales persons an amount in excess of the average earnings of their average agents or sales persons under normal conditions;

- (b) As "up to", or probable maximum earnings of prospective agents or salespersons an amount in excess of the average earnings, over a reasonable period, of a substantial number of their agents or salespersons under normal conditions. (Dec. 12, 1932.)

0442. Vendor Advertiser—Treatise on Hypno-Therapy.—W. E. Hill, advertising as Dr. W. E. Hill, Spartanburg, S.C., vendor-advertiser, is engaged in selling a treatise on hypnotism and hypno-therapy, and in advertising represented:

"HYPNO-THERAPY A NEW SCIENCE A HIGHLY PROFITABLE UNCROWDED PROFESSION taught complete in my 6000-word treatise. Teaches art of producing hypnosis—How mind responds to hypnotic suggestions producing the suggested conditions in the body—How hypno-therapy excels all other methods in relieving pain, producing anesthesia and healing all psychogenic diseases. In fact covers everything the professionals practitioner should know \$5 (adults only). Dr. W. E. Hill, Box 824, Spartanburg, S.C.

"HYPNO-THERAPY TAUGHT COMPLETE \$5.00 Successful, Profitable, Uncrowded Profession. Suggestion 100% effective in hypnosis. My 12,000 word treatise fully explains and teaches this vastly superior method of psycho-therapeutics—shows relation of mind to physical mal-activity—teaches you the art of producing hypnosis—gives actual procedure for curing diseases, all habits, vice, etc. Every practitioner and psychologist needs this training. \$5.00 may change your whole career. Dr. W. E. Hill, Box 824, Spartanburg, S.C.

"BECOME A HEALER DIGNIFIED, PROFITABLE, UNCROWDED PROFESSION.

"My peerless method produces astounding results. Send for free booklet, 'The Art of Healing'. Dr. W. E. Hill, Box 824, Spartanburg, S.C.

"LEARN HYPNOTHERAPY. Treating art of treating disabilities by suggestion during hypnosis. Price \$2.50. Satisfaction assured. Dr. W. E. Hill, Box 824, Spartanburg, S.C."

and in booklets and follow-up literature:

"Hypno-Therapy, put into practical use by an experienced healer, can do more good and relieve more pain and disabilities in a shorter length of time than can be accomplished by any medical physician.

"You need my training in Hypno-Therapy because it teaches the most successful method of healing; because by its use you can cure diseases and habits that fail to respond to other methods.

"You will not only avoid conflict (with the medical fraternity) but can actually gain their good will, if you will but follow the instructions that are set forth fully in the treatise.

"You will be 'called in' by the medical profession to render expert opinion and advice in various cases of mental complexes.

"You may select a title that appeals to you from those given in the following list:

Faith Healer

Divine Healer

Scientific Healer

Absolute Science Practitioner

Cosmic Science Practitioner

Infinite Science Practitioner

"The procedure set forth in 'Hypno-Therapy' is the only 'sure cure' for chronic psycho-genetic diseases and deep rooted habits.

"The procedure taught in this treatise will accomplish all that it is possible to accomplish by any method of psycho-therapeutics and in addition it will accomplish phenomenal results that it is impossible to obtain by any of the other methods."

Respondent represents also in his treatise that a large number of ailments specifically mentioned have been "positively cured" and "successfully and permanently treated" by hypnosis; that a hypnotist does "something no ordinary physician with a cabinet full of drugs can do"; that a hypnotist is entitled to charge "never less than \$25 for a treatment"; that practitioners of other mental healing cults are resorting in large numbers to respondent's particular school so as to effect "instantaneous cures"; that "the results obtained by this method are indeed miraculous"; and that "missionaries are already beginning to realize the outstanding value of this (hypnotic) art."

The respondent furthermore uses the title "Doctor" in connection with his advertising as a healer of bodily ills, whereas he is not a doctor of medicine, but represents to the Commission that he is a doctor of divinity.

The foregoing representations are deemed by the Federal Trade Commission incorrect in certain respects and exaggerated and misleading in others, to the injury of the public and of legitimate competitors, with the capacity and tendency to mislead and deceive the purchasing public into buying said Hypno-Therapy in the erroneous belief that such representations are true and that the use of said treatise will enable any person to accomplish in all cases the results set out or indicated therein.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or



causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That hypno-therapy excels all other methods, or any other method whatsoever, in relieving pain or in producing anesthesia or in the healing of psycho-genetic or any other types of diseases;
- (b) That respondent's method:  
 Covers everything a professional practitioner should know;  
 or  
 Is a vastly superior method of psycho-therapeutics; or  
 Gives procedure that will cure diseases, all habits, or vice; or  
 Produces either astounding or miraculous or phenomenal results; or  
 Attracts large numbers of practitioners of other mental healing cults so as to effect "instantaneous cures;" or  
 Teaches the most successful method of healing; or  
 Enables you to cure diseases and habits that fail to respond to other methods; or  
 Will gain you the good will of the medical fraternity; or  
 Will give you the standing of an expert, with the medical profession, who will call you in for advice on mental complex cases; or  
 Acquaints you with the only procedure for the "sure cure" of chronic psycho-genetic diseases, or of deep rooted habits, or of any other affliction or disorder; or  
 Will enable you to accomplish all that it is possible to accomplish by any method of psycho-therapeutics; or  
 Will accomplish results impossible to obtain by any of the other methods;
- (c) That hypnosis, as practiced by an experienced healer, or by any other person, can "do more good", or relieve more pain and disabilities", in "A shorter length of time" or any other time, than can be accomplished by any medical physician;
- (d) That suggestion is 100 percent efficient in hypnosis;
- (e) That hypnosis is either a positive cure or a successful or permanent or competent treatment of, or an effective method of dealing with any of the following disabilities:  
 Acute or chronic rheumatism,  
 Sciatica,  
 Rheumatoid Arthritis,  
 Lumbago or muscular rheumatism,  
 General paralysis,  
 Infantile paralysis,

Paralytic stroke,  
 Spinal meningitis,  
 Hardening of the arteries,  
 Epilepsy,  
 Locomotor ataxia,  
 Apoplexy,  
 Lock jaw,  
 Neuralgia,  
 Neuritis,  
 Vertigo,  
 Drop wrist,  
 Delirium,  
 Insanity,  
 Hysteria,  
 Palsy,  
 Aphasia,  
 St. Vitus' Dance,  
 Convulsions,  
 Eczema, or  
 Hay fever;

- (f) That one practicing hypno-therapy is doing something that no ordinary physician with a cabinet full of drugs can do; or that he is entitled to charge a minimum of \$25 for a treatment;
- (g) That a hypnotist may appropriately designate himself either as a  
 Faith Healer,  
 Divine Healer, or  
 Scientific healer, or  
 Absolute science practitioner, or  
 Cosmic science practitioner; or  
 Infinite science practitioner;
- (h) Inferentially or otherwise, that missionaries are now practicing hypnotism;

and all representations and statements equivalent thereto in form or substance, and also to cease and desist from advertising himself as a "doctor" until he is such in fact. (Dec. 12, 1932.)

0443. Vendor Advertiser—Hosiery—Canvassing Agents.—L. E. and Frank Wilkin, trading as Wilknit Hosiery Co., Greenfield, Ohio, vendor-advertiser, is engaged in selling hosiery and seeking agents to sell it from house to house, and in advertising represented:

"Chance to Earn Up to \$72 a week and more.

"Get Hosiery and Ford without Cost.

"No Experience Needed."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce:

- (a) That respondents will not represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondents, salespersons under normal conditions in the due course of respondents' business;
- (b) That respondents will not represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondents' salespersons under normal conditions in the due course of respondents' business.
- (c) That in their future advertising where a word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with as to form and at least one fourth the size of the type used in printing such statement, claim, or representation of earnings. (Dec. 16, 1932.)

0444. Vendor Advertiser—Oil Burners.—Vendor-advertiser is engaged in selling oil burners and in advertising represented:

"30 Days' Free Trial Offer.

"Write at once for free booklet on home heating and our free burner offer.

"We want spare or full time workers immediately. If large earnings interest you, write or wire us for protected territory."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That any oil burner is offered on free trial unless such oil burner is sent to the prospective purchaser without requiring that any money be paid, that any deposit be made, or that any service be rendered;
- (b) That any oil burner is offered free unless such oil burner is given without requiring the payment of any money, the

rendering of any service, or the purchase of any other article;

- (c) That the amount that will probably be earned by prospective agents is in excess of the average amount earned by respondent's full-time agents under normal conditions over a reasonable period of time, as indicated by competent records maintained by respondent;

and all statements and representations equivalent or similar thereto in form or substance. (Jan. 16, 1933.)

0445. **Vendor-Advertiser—Magic Headlights.**—Manufacturer and vendor-advertiser is engaged in selling headlights for automobiles and in advertising represented:

"A road light that literally takes the light out of the sky.

"AGENTS CLEANING HUGE PROFITS. This is your opportunity to make up to \$10-\$20-\$30 per day. Some agents make even more.

"Over 20,000,000 cars need this wonderful light.

"Hundreds of men have made big fortunes out of make-shift spot lights and painted bulbs that only did half the job.

"Use this great device to build up a crew of your own—and double your earnings—earnings which by themselves will be bigger than you ever saw before.

"With this light you need have no more fear of fog, rain or darkness. There is no light like it in the world.

"Throws Mysterious Rays 1000 Feet.

"Startling New Principle in Light Mechanics Ends Fatal Night Crashes.

"Daylight Illumination at Midnight Yet Not a Hint of Glare!

"The Only Conqueror of Fog and Glare.

"I'll give you this wonderful demonstrator FREE.

"You can easily make \$10 to \$15 a day for yourself."

In a stipulation filed and approved by the Commission it is represented that this company has completely changed ownership and management and has definitely discontinued advertising and selling direct to the public through agents except to fill unsolicited orders.

It is also stipulated that if the present owner should resume advertising, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission, and in particular that it will not describe such product as "mysterious", or without a "hint of glare", or as the "only conqueror of fog", or that it is to be obtained "free" unless and until such be actually the case; and that any statements as to the probable or possible earnings of its agents shall be confined to the actual average earnings of its average type direct mail agents and average type store dealer agents,

for both part-time and full-time work, under normal or average conditions, omitting specific outstanding earnings. (Jan. 16, 1933.)

0446. Vendor-Advertiser—"Marvelite" (attachment for the headlights of motor vehicles).—The Marvelite Corporation, of Chicago, Ill., vendor-advertiser, is engaged in selling an attachment for headlight lamps that deflects the light, and in advertising represented:

**"FREE OUTFIT BRINGS YOU CASH EVERY DAY.**

Night driving now safe! A new scientifically constructed spheroidal condenser heavily plated with solid silver—not a painted bulb. Increases light of headlights 50% without glare. Instantly installed. No dimming—no tilting—penetrates fog, rain, mist and snow. Low retail price. Undersells all competition. Big commissions.

**AGENTS UP TO \$50.00 A DAY.**

**"Amazing Demonstrator Coining Money For Marvelite Salesmen.**

**"This Strange Device Attracts Crowds Everywhere. Sales Pour In Wherever Shown.**

**"\* \* \* I want to send you my free sample offer of the most astounding automobile headlight device ever invented so that you can put it on your car and prove for yourself that here is a magic discovery that equals the self-starter or free wheeling.**

**"All in all you have in Marvelite a device that at one stroke ELIMINATES GLARE and nearly DOUBLES THE ROAD LIGHT. A simple, inexpensive device that will change weak, inefficient, blinding headlights into non-glaring POWER-LIGHTS that illuminates the road 600 feet ahead, cuts off glare, and gives a maximum of penetration through fog, blinding lights, rain, sleet, and snow.**

**"If \$50 to \$100 a week at the start with prospects of building this up even bigger through exclusive territory and sub-agents interests you—then don't Delay—Don't Put Off. Remember that I can't afford to keep such a proposition open long.**

**"I'll also send you FREE our \$2.50 course of Lessons entitled, 'How To Be A Headlight Expert.'**

**"SELLING LIKE WILDFIRE ON SIGHT!**

**"PIERCES FOG, MIST, SLEET AND SNOW.**

**"PENETRATES GLARE OF COMING CARS.**

**"MY WONDERFUL SALES PLAN AND FREE SAMPLE OFFER START YOU OFF WITH BIG CASH EARNINGS IMMEDIATELY.**

**"HOW I GIVE A FREE SAMPLE."**

This advertiser-vendor assures the Commission it has discontinued advertising and limits sales direct to filling unsolicited orders and agrees by stipulation filed and approved by the Commission that if it

should resume advertising, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that it will not describe such product as "strange", "startling", "magical", or "a new principle in light mechanics"; or that it "penetrates the glare of coming cars" and similar claims; or that there are 26,000,000 prospective purchasers; or that it is to be obtained free unless and until such be actually the case; or that respondent's agents are setting new sales records; and that any statements as to the probable or possible earnings of its agents shall be confined to the actual average earnings of its average type direct mail agents and average type store dealer agents, for both part-time and full-time work, under normal or average conditions, omitting specific outstanding earnings. (Jan. 16, 1933.)

0447. **Vendor-Advertiser—Asthma Kapsuls.**—The Asthma Kapsul Co., of Tacoma, Wash., vendor-advertiser, is engaged in selling a treatment for asthma, bronchitis, hay fever, and kindred afflictions, and in advertising represented:

**"ASTHMA KAPSULS** contain certain curative elements, also certain healing properties, which go directly to the cause of your trouble.

**"ASTHMA KAPSULS** do not act as a quick, temporary relief. The results will be permanent. Your trouble will not return later on.

**"Order Now and Know Permanent Relief.**

**"Asthma Kapsuls** will correct any congestion in the bronchial tract. They will relieve permanently any tightness in the chest.

**"We do not try to treat your symptoms. We believe in removing the cause of your trouble through the use of diet and Asthma Kapsuls.**

**"Once Asthma Kapsuls cure you no more medicine is needed. Why delay? Use the enclosed order blank and know permanent relief from your suffering.**

**"Don't FORGET ASTHMA KAPSULS BRING PERMANENT RESULTS.**

**"ASTHMA KAPSULS** shut off this supply of mucus and phlegm from forming in your system, thus effecting permanent results.

**"ASTHMA KAPSULS REMOVE THE CAUSE OF YOUR TROUBLE.**

**"ASTHMA KAPSULS** have been scientifically developed to give permanent benefits. They are not merely a relief medicine, but are compounded of ingredients that really overcome and correct the cause of **ASTHMA, HAY FEVER, BRONCHITIS AND CATARRH.**

"Asthma Kapsuls bring permanent relief from Asthma, Hay Fever and Bronchitis.

"If you are bothered with chronic colds, shortness of breath and a general rundown condition, ASTHMA KAPSULS will end these troubles for you, also.

"When this is done, your trouble will disappear. The different elements in Asthma Kapsuls will do this very thing. They go to the seat of the trouble and correct that."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That either asthma or bronchitis or hay fever or any other bronchial trouble disappears almost immediately after taking Asthma Kapsuls;
- (b) That said preparation is a sure-fire method of overcoming such ailments;
- (c) That the use of said preparation will free one from asthma or hay fever or bronchitis;
- (d) That this is either an entirely different medicine or a new method of treating such ailments;
- (e) That Asthma Kapsuls either give permanent benefits, or permanent relief, or overcome or correct the cause of asthma, or hay fever, or bronchitis, or catarrh;
- (f) That one month's treatment constitutes a complete or sufficient treatment so long as respondent by the use of repeated and persistent form letters insists that the user continue to buy treatments;
- (g) That said Asthma Kapsuls will positively, or at all, put an end to one's suffering, or to sleepless nights, or to shortness of breath, or to coughing spells, or to bad attacks; or to chronic colds, or to a general rundown condition;
- (h) That said treatment goes to the seat of the trouble in the foregoing ailments or corrects same;
- (i) That the properties of Asthma Kapsuls go directly to the cause of your trouble, or that the results will be permanent, or that the trouble will not return later;
- (j) That said treatment will correct any congestion in the bronchial tract, or will permanently relieve any tightness in the chest; or will effect permanent results;
- (k) That Asthma Kapsuls remove the cause of your trouble or enable you to get rid of your trouble;

- (l) That Asthma Kapsuls are not a temporary relief;
- (m) That "you cannot expect a miracle to happen with any medicine", or that "you cannot expect to be completely free from your trouble in a short while", or that to obtain permanent relief one must use said "product steadily over a period of months", or that Asthma Kapsuls "gradually" remove the cause of one's trouble, so long as it has been represented that one month's supply will be adequate and/or that the curative effect of Asthma Kapsuls is "quick", or "sure" or "speedy";
- (n) That the price of \$5.50 offered is a "special" price so long as it is extended to all prospects at a certain stage of the negotiations;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 16, 1933.)

0448. Vendor-Advertiser—Rheumatic Treatment.—The Rheuma Co., of Buffalo, N.Y., vendor-advertiser, is engaged in selling a medicine for the treatment of rheumatic ailments designated Ru-Ma, and in advertising represented:

"New Medicine Drives Rheumatic Poisons from Joints and Muscles.

"EASES PAIN FIRST DAY. Poisons in the blood settling in the joints and muscles cause rheumatism. You cannot get rid of rheumatic agony till these dangerous poisons are driven out of your system.

"What you need is RU-MA, the new medicine that acts directly on the kidneys and bowels, and helps expel through the natural channels of elimination the dangerous poisons that cause rheumatic misery.

"No long waiting for your suffering to stop. Ru-Ma usually eases pain the first day and is guaranteed to free muscles and joints from all painful stiffness, swelling and lameness, or money back.

"RHEUMATISM GOES. SWOLLEN JOINTS VANISH. How to End Rheumatism in Less Than a Week.

"If you suffer from torturing rheumatic pains, sore muscles or stiff inflamed joints, it's because your system is full of the dangerous poisons that cause rheumatism and make thousands helpless. What you need is RU-MA, and need it right now.

"RU-MA acts on the blood, stomach, kidneys and liver, and drives the dangerous rheumatic poisons from the system through the natural channels of elimination—it eases pain the first day.

"You must use an internal medicine to free the joints and muscles of crippling stiffness, soreness and torturing pain. That's



why RU-MA succeeds while external remedies and pain deadening drugs give only temporary relief.

**"RHEUMATISM. NEW MEDICINE GUARANTEED TO BREAK RHEUMATISM'S GRIP.**

"No matter how crippled and helpless you are with rheumatism; no matter how great your suffering; you can now ease that pain in a day, and break rheumatism's terrible grip on your system in less than a week or nothing to pay.

"No long, discouraging wait while you wonder if that awful pain will ever stop; for it starts stopping right from the first day's use of Ru-Ma. Magically your muscles and joints limber up, swelling vanishes, aches and twinges disappear, away go limping and hobbling, crutches and canes."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) From using the words "end", "vanish", "rid", "go", "stop" or "frees" as suggestive of, or representative of, that the use of such medicine will abolish rheumatism by prevention of recurrence of future attacks;
- (b) From using the expression "no matter how crippled and helpless you are with rheumatism" as indicative that the medicine will relieve or cure extreme conditions which are beyond help because of irreparable tissue damage in joints or other human tissues; and/or any other wording of similar meaning or intent;
- (c) From representing:
  1. That no matter what kind of rheumatism you may have Ru-Ma is an effective treatment for it; or
  2. That inferentially or otherwise Ru-Ma affords enduring relief for all the various kinds of rheumatism; or
  3. That Ru-Ma materially removes actual cause of the disease rheumatism however much it may benefit by dissipating fever, aches, pains, soreness, lameness and other symptoms by removing irritant poisons which give rise thereto;

and all representations and statements equivalent thereto in form or substance. (Jan. 16, 1933.)

0449. Vendor Advertiser—Magi-Forms.—Jacob Magnnheim, doing business under the trade name of Besjay Medical Co., Brooklyn, N.Y., vendor-advertiser, is engaged in selling a medicinal preparation

known as "Magi-Form" for the treatment of certain female ailments, and in advertising represented:

"\* \* \* a definite assurance of cleanliness and peace of mind.

"They are the \* \* \* surest method of Feminine Hygiene yet discovered; the first real solution to the problem that has worried womankind since the dawn of creation.

"Magi-Forms retain their germicidal effect for about eight hours.

"Surest and safest remedy for maintaining the normal functions of the genital organs.

"Married Women Your Worries are Ended.

"Keeps married women strong, healthy and dainty.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That by inference or direct statement that said medicinal preparation is a contraceptive or abortifacient;
- (b) That the use of said medicinal preparation is an assurance of peace of mind;
- (c) That said medicinal preparation is the surest method of feminine hygiene;
- (d) That said medicinal preparation is a solution of the problem that has worried womankind;
- (e) That said medicinal preparation is a germicide or produces a germicidal effect;
- (f) That said medicinal preparation is the surest or safest remedy for maintaining the normal functions of the genital organs;
- (g) That the use of said medicinal preparation will relieve married women from worry or end their worry;
- (h) That the use of said medicinal preparation will keep married women strong and healthy;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 16, 1933.)

0450. Vendor Advertiser—Rheumatic Treatment.—Plough, Inc., of Memphis, Tenn., vendor-advertiser, is engaged in selling a treatment for rheumatic pain and fever, and in advertising represented:

"THE WAY TO END RHEUMATIC PAIN. The best way to get rid of rheumatic aches and pains of the joints and muscles is to cleanse your system of acid poisons which cause the

trouble. Prescription C-2223—the original formula of a well-known doctor—attacks rheumatism at its source by cleansing the system of toxic acids and putrid waste matter. Soon those aches and pains go, and you are well, active and happy again. All prescription drug stores sell C-2223 on money-back guarantee.

**“RID SYSTEM OF ACID POISONS.**

“Prescription C-2223 neutralizes toxic acids in the joints and drives out poisonous waste matter from the system, thereby bringing quick relief from rheumatic misery.

“Prescription C-2223 is formulated to attack rheumatic fever at its source by helping to neutralize toxic acids in the joints and to drive out poisonous waste matter from your system. When this has been effected, your pain and suffering usually go—quick!

“C-2223 is based on scientific knowledge because it drives from the system toxic acids and poisonous waste matter—the two main causes of rheumatic pain.”

whereas it appears that an analysis of said prescription C-2223 shows it to have alterative properties and some very slight anodyne properties but no properties capable of producing the effects claimed in the advertising material.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the use of this medicine will either end rheumatic pain or rid a sufferer of such aches and pains;
- (b) That rheumatic trouble is caused by acid, poisons, unless qualified that it is sometimes so caused;
- (c) That this prescription attacks rheumatism at its source by cleansing the system of toxic acids and/or putrid waste matter; or that it does so cleanse the system; or rid the system of acid poisons;
- (d) That this medicine will make you “well” from the aches and pains of rheumatism;
- (e) That it neutralizes toxic acids in the joints, or “drives out” poisonous waste matter from the system;
- (f) That it attacks rheumatic fever at its source, or causes your rheumatic pain and suffering to go quickly;
- (g) That the use of this medicine will restore the rheumatic sufferer to glorious good health and activity;
- (h) That after taking said treatment, the dangerous poisons that cause rheumatism are gone from your system;

and all representations and statements equivalent thereto in form or substance. (Jan. 16, 1933.)

0451. **Vendor-Advertiser—Cosmetic Cream.**—Elsner's Pearl Cream Co., a corporation, of Chicago, Ill., vendor-advertiser, is engaged in selling a cosmetic cream designated Elsner's Pearl Cream, and in advertising represented:

" \* \* \* to remove pimples, blotches, eruptions, enlarged pores.

"Whitens the skin 7 shades in 7 nights.

"A soft skin smooth as the rose petal, free from blemishes.

"A blemish-free lovely skin.

"An effective source of overcoming embarrassing complexion blemishes, pimples, sallowness, skin blotches.

"After a few more treatments the blemishes will fade away.

"A flawless, blemish-free complexion.

"Would you like a complexion that invites admirers and enables you to hold the man of your choice?"

In a stipulation filed and approved by the Federal Trade Commission this advertiser assures the Commission it has definitely discontinued the advertising herein objected to, and does not intend at this time to resume such advertising in the future, and hereby stipulates and agrees that it will not do so.

It is also stipulated and agreed that if the said Elsner's Pearl Cream Co. 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 in the trial of the complaint which the Commission may issue. (Jan. 16, 1933.)

0452. **Vendor-Advertiser—Pep Pills.**—Neal Farr Stranahan, trading as Farr Service, vendor-advertiser, of Flint, Mich., is engaged in selling so-called "Pep Pills," and in advertising represented:

"PeP Pills. Make the old act young and the young more active.

"Sure-fire action. Enjoy yourself. 24 hour satisfaction guaranteed. When others fail try these.

"100—\$2.00 C.O.D., \$2.15. Sent in plain wrapper.

"Address FARR SERVICE, P. O. Box 101, Flint, Michigan."

"Pep Pills contain non-injurious, non-habit forming drugs.

These pills may be taken without fear of harmful results, but instructions must be carefully followed."

which representations the Federal Trade Commission considers incorrect and misleading to the injury of the public and of competitors inasmuch as the advertising set-up infers that "Pep Pills" have aphrodisiac properties and are offered as a so-called restorer of lost manhood and furthermore that they are harmless; whereas the Commission is advised that of the three ingredients composing this formula,

nux vomica contains some tonic properties, but is dangerous; damiana, while attributed with having some aphrodisiac properties, has no scientific evidence to prove that it would have any such action; and phosphorus would serve only as a source of phosphorus, if there were a deficiency of that element; and accordingly that the taking of these pills could not assure one of having the kind of "pep" inferred by the name and the advertising claims.

In a stipulation:

The respondent represents to the Federal Trade Commission that he has definitely discontinued the advertising objected to, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that no claims will be made directly or inferentially that this product is an effective aphrodisiac.

It is stipulated and agreed that if the said Neal Farr Stranahan 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 him in the trial of the complaint which the Commission may issue. (Jan. 16, 1933.)

0453. **Vendor-Advertiser—Gland Treatment.**—Electro-Thermal Co., a corporation, vendor-advertiser, of Steubenville, Ohio, is engaged in selling an electric device designated as Thermalaid, for the treatment of the prostate gland by the application of heat, and in advertising represented:

"Have you lost your strength, vigor, pep?

"Do you suffer frequent night risings, pains in the back, legs or feet, nervousness, mental depression, sciatica, etc.? Science has discovered the cause of these ailments in many men past 40. It is the prostate gland failure.

"And a hundred thousand men today, who heeded these warnings and learned the truth about this danger gland have found a way to end these painful, sometimes embarrassing, warning symptoms \* \* \*.

"A hundred thousand men today, who heeded these warnings and learned the truth about this danger gland (prostate gland) have found a way to end those painful, sometimes embarrassing, warning symptoms \* \* \* they have learned how a great scientific discovery can now be employed for the purpose of preserving health and strength, in many cases to prolong life by curbing the ravages of this murderous little gland.

"Free to Men Past Forty. \* \* \* two-thirds of all men past middle age are said to have a certain seldom mentioned disorder \* \* \* Medical men know this condition as hypertrophy of the prostate gland.

"100,000 men have used it to restore the prostate gland to normal functioning.

"The principle involved in this treatment is recommended by practically all of the physicians in America.

"Another grateful effect is usually the immediate disappearance of chronic constipation. Usually the entire body is toned up, as much of your youthful vigor is restored. These results are guaranteed.

"Do you suffer these painful conditions? Sciatica, backache, constipation, bladder trouble, piles, frequent urination.

"\* \* \* the new inexpensive way in which the painful symptoms of this menace to health, happiness, life itself, are being stamped out \* \* \*.

"Thermalaid entirely cured me \* \* \* Any man bothered with piles, prostatic trouble, or constipation can never regret buying of you, as it positively cured me of all three.'

"\* \* \* we expect ideal conditions for the successful treatment of prostatic sluggishness and common disease of the gland; a gland often concerned in impotency and marital instincts.

"A Treatment for the correction of prostatic trouble, piles and constipation.

"Is it always necessary, that men go on suffering from sciatica, backaches, pains in the legs and feet, pains in the groin, sleeplessness at night, the need of rising frequently during the night to void urine, to be always listless and tired, worrisome, fearful and blue? \* \* \* Again science says No.

"If you could be rid of such kindred afflictions as bladder trouble, loss of pep, rheumatism.

"No matter what distressing symptoms of prostatic disorders may be yours, no matter what your mental or physical condition may be, I agree to make you feel ten years younger."

when in fact it is considered that the use of said device does not constitute competent treatment for the various ailments mentioned, its therapeutic efficacy being limited to the relief of hypertrophy of the prostatic gland.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale

of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the use of electric device is a competent treatment of uremia, pains in the back, pains in the legs, pains in the feet, nervousness, mental depression, sciatica, fatigue, bladder trouble, rheumatism, or loss of strength, vigor, or pep unless such representations are qualified to indicate that the use of said device may be expected to produce beneficial results only in those cases where the ailment is a result of disorder of the prostate gland;
- (b) That any of the ailments mentioned in the preceding paragraph are necessarily caused by the failure of the prostatic gland;
- (c) That the 100,000 men, or any other number not subject to proof, have by use of said electric device restored prostate glands to normal functioning or been relieved of any of the symptoms mentioned in paragraph (a) hereof;
- (d) That two thirds, or any other proportion not subject to proof, of men past 40 years of age are afflicted with hypertrophy of the prostate gland;
- (e) That the principle involved in the use of said device is recommended by practically all of the physicians in America;
- (f) That the use of said device is a positive cure for any ailment;
- (g) That by the use of said electric device a person can be made to feel 10 years younger;
- (h) That results to be expected from use of said device are guaranteed;
- (i) That the use of said device constitutes a competent treatment for all diseased conditions of the prostate gland;
- (j) Directly or by implication that the use of said device will effect a cure;
- (k) That the prostate gland is a murderous gland or that ravages result from its disorder;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 16, 1933.)

0454. Vendor Advertiser—Liquid Nail Polish.—D. B. Morgan and C. O. Sampson, trading as Glissen Co., vendor-advertiser, of San Francisco, Calif., are engaged in selling a liquid nail polish designated Glissen, and in advertising represented:

“Glissen is the only polish that protects your nails against ridges, white spots and brittleness.”

when, in fact, so far as the Commission has been able to ascertain no substance has yet been found which will prevent white spots and ridges on the finger nails, these appearing to be only conditions caused in natural growth.

In a stipulation the respondents represent to the Federal Trade Commission that they have definitely discontinued the advertising herein objected to, and do not intend at this time to resume such advertising in the future, and hereby stipulate and agree that they will not do so. (Jan. 16, 1933.)

0455. **Publisher—Bunion Treatment.**—The publisher of a magazine circulated among movie actors and fans of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a bunion treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 16, 1933.)

0456, 0457. **Publishers—Bunion Treatments.**—Respondents <sup>1</sup> publishers of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a bunion treatment.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; and state and agree:

That said publishers have no interest, right, or title in said advertisements, or in the business of said advertiser, proposed respondent herein, and if they may have any such interest they hereby waive their right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission:

That said publishers waive their right to be made party respondents to said proposed complaint against the advertiser herein named for the protection of any such right:

That both as to the Federal Trade Commission and the advertiser herein named, they waive any such right which may be adversely affected by any cease and desist order the Commission may make or issue upon such complaint against the advertiser touching the subject matter of said proposed complaint:

<sup>1</sup> The stipulations appear to be identical, except for the fact that respondent in 0456 is set forth as a publisher of two magazines, and respondent publisher in 0457 is set forth as publisher of a magazine.



That in favor of the Federal Trade Commission and the advertiser herein named, they hereby waive any such rights which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaint. (Jan. 16, 1933.)

0458-0462. **Publishers—Bunion Treatments.**—Publishers of (0458) a magazine read largely by movie actors and fans, and of wide interstate circulation; (0459) two magazines read largely by screen people and of wide interstate circulation; (0460) a home-read magazine of wide circulation; (0461) a style magazine of wide interstate circulation; (0462) a mechanical magazine of wide interstate circulation; printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a bunion treatment.

In stipulations filed with and approved by the Federal Trade Commission, these publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Jan. 16, 1933.)

0463. **Publisher—Feminine Hygiene Preparation.**—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a preparation for female use.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; and agrees;

That said publisher has no interest, right, or title in said advertisement, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest, it hereby waives its right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission:

That said publisher waives its right to be made a party respondent to said proposed complaint against the advertiser herein named, for the protection of any such right:

That both as to the Federal Trade Commission and the advertiser herein named, it waives any such right which may be adversely affected by any cease and desist order the Commission may make or

issue upon such complaint against the advertiser, touching the subject matter of said proposed complaint:

That in favor of the Federal Trade Commission and the advertiser herein named, it hereby waives any such right which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaints. (Jan. 16, 1933.)

0464. **Publisher—Herb Tea.**—The publisher of a large midwest daily newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an herb tea.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that it cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 16, 1933.)

0465. **Publisher—Flesh Producing Cream.**—The publisher of a motion-picture magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a massage cream alleged to feed flesh and build tissue as, when, and where wanted.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission, and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 16, 1933.)

0466. **Vendor-Advertiser—Shirts, Hosiery, Ties, Etc.**—National Men's Wear, Inc., vendor-advertiser, of Chicago, Ill., is engaged in selling shirts, hosiery, ties, and similar men's wear, and in advertising represented:

**"LEAVE THE CROWD BEHIND GET A HEAD START TOWARD PROSPERITY!** Take any line—stack it up against the National Men's Wear line—and we'll **PROVE** you can make more money selling National Shirts, Ties, Hosiery, and Underwear.

"National Men's Wear Salesmen make amazingly large incomes. Why? Because 50 million men are still wearing Shirts, Socks, Ties, and Underwear. They Buy where they can get the best for the least money. They buy National Men's Wear Eagerly because of the better values, exclusive features, and low prices we offer. In these days of big bargains National Men's Wear prices and values stand out like the blazing sun.

"We'll hand You a Complete Men's Wear Store.

"Every Man Buys Shirts Ties Hosiery Underwear.

**"MAKE up to \$65 A WEEK selling a MEN'S WEAR LINE that meets today's conditions.**

"Take on National Men's Wear Line and We'll hand you a veritable Men's Furnishings Store that will set you up in business just like a real merchant. We'll show you how to sell high quality Shirts, Neckwear, Hosiery and Underwear at such low prices that no competition can touch you. If a man lived across the street from the largest, finest Men's Wear factory in the country, and had the privilege of going in and buying at wholesale, he couldn't get a better selection, bigger values, and lower prices, and quicker service than you'll offer.

**"QUALITY at Record Breaking Prices.**

"National shirts not only give you more days' wear per dollar, but they actually cost less than other shirts of similar quality, because we sell direct from factory to wearer.

"Sold only direct from factory to wearer."

"We give you a complete men's furnishing store that puts you into business just like a real merchant."

"Amazing values offered in this sample book are made possible because of our economical method of selling direct from factory to wearer through our authorized Sales Representatives."

when in fact the advertiser does not manufacture the articles, but buys them from the factory, and resells them at a profit above the factory price; the prices charged to the agents appear to be equal to or in excess of the retail price charged in regular retail stores for similar merchandise; respondent's records do not show that any of its agents have made \$65 a week profit by the selling of this line of men's wear; the "free sample outfit" is not free and should not be so represented; the promise to hand the agent a "veritable men's furnishing store that will set him up in business just like a real

merchant" amounts to nothing more than the providing of a small pocket sample book; and the so-called "amazing free offer" is only a bonus or premium of three handkerchiefs with a \$5 purchase.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That National Men's Wear salesmen make amazingly large incomes;
- (b) That in these days of big bargains National Men's Wear prices and values stand out like the blazing sun;
- (c) That "we'll hand you a complete men's wear store;"
- (d) That "we'll hand you a veritable men's furnishing store that will set you up in business just like a real merchant;"
- (e) That the salesmen taking on this line can give as good a selection, as big values, as low prices, and as quick service as the largest, finest men's wear factory in the country could give to a man who had the privilege of buying at wholesale;
- (f) That the National Line of shirts, hosiery, ties, and underwear is of a quality furnished by the best men's wear stores only at prohibitive prices;
- (g) That the offer of men's wear to agents for their own use or the so-called "offer" of free goods to the customer with his order is either amazing or sensational;
- (h) That a sample case is furnished free to the salesman unless and until such be the fact;
- (i) That a premium of three handkerchiefs given with a \$5 purchase is free, inasmuch as the price thereof has been included in the purchase price of the goods;
- (j) That said goods are "sold only direct from factory to wearer", until such be the case;
- (k) That cheaper prices are "made possible because of our economical method of selling direct from factory", so long as the present method is used;
- (l) That National shirts "actually cost less than other shirts of similar quality" while present prices prevail; or that they cost less "because we sell direct from factory to wearer", until such time as the factory shall sell direct to wearer at factory prices;

and all representations and statements equivalent thereto in form or substance. (Jan. 23, 1933.)

0467. **Publisher—Female Hygiene, Etc.**—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of products for private use of married ladies.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; and agrees:

That said publisher has no interest, right or title in said advertisement, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest, it hereby waives its right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission:

That said publisher waives its right to be made a party respondent to said proposed complaint against the advertiser herein named, for the protection of any such right:

That both as to the Federal Trade Commission and the advertiser herein named, it waives any such right which may be adversely affected by any cease and desist order the Commission may make or issue upon such complaint against the advertiser, touching the subject matter of said proposed complaint:

That in favor of the Federal Trade Commission and the advertiser herein named, it hereby waives any such right which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaints. (Jan. 23, 1933.)

0468. **Vendor-Advertiser—Products for Private use of Married Ladies.**—Frederick G. Turck, trading as Dilapex Laboratories, vendor-advertiser, of New York City, is engaged in selling products for private use of married ladies, and in advertising represented:

“FEMININE HYGIENE. Free Booklet describing wonderful products for private use of married ladies. Dilapex Laboratories, 148 West 11th Street, New York City, Dept. O.

“THE DILAPEX PESSARY—WOMAN’S FRIEND. For the prevention and positive cure of uterine complaints particularly that class known as painful, scanty or suppressed menstruation, leucorrhœa, and kindred troubles.

“This method of obtaining relief is simple yet certain.

“The Dilapex Pessary should be adjusted as shown in the illustrations and retained in place two or three days before the expected period, thus dilating the mouth of the womb to its normal condition.

"For suppressed menstruation the Dilapex Pessary has never been known to fail no matter what the cause of the trouble or of how long standing.

"DR. LA MEMES FRENCH ANTISEPTIC CONES. If you want an absolutely Reliable and Infallible Germ Destroying Remedy, which is not only perfectly harmless but greatly beneficial to the parts applied.

"An absolutely disinfectant which makes the spread of Germs and Disease Impossible.

"A most convenient and natural means which changes Live Germs into inert matter by simply abstracting those elements which are absolutely necessary to their life and propagation.

"Then get Dr. La Memes' Antiseptic Cones.

"By a Germicide is meant: 'Any medicine which when applied to a surface of the body already infected or upon which Germs have already lodged will change them so as to render them inert or harmless and will prevent their spread or evolution.'

"Dr. La Memes' is the only Medicine known to science which has a Specific Acting upon Germs. It accomplishes its purpose by absorbing those elements.

"Antiseptic Cones' are not poisonous. They at once combine marvelous Antiseptic properties along with tonic and soothing elements, curing most all Diseases of Women or Female Weaknesses, such as Ammenorrhoea, (Suppressed Flow) Dysmenorrhoea, (Painful Menstruation) Inflammation and Ulceration of the Womb, Nervous Prostration, Backache, Leucorrhoea, (The Whites) Menorrhagia, (Profuse Menstruation) Prolapsus Uteri, (Falling of the Womb), as a Cleanser and Preventive of Disease, a Tonic Antiseptic, curing all inflamed and Congested Conditions of the Mucous Membrane, the Vagina and the Womb. Hence is the secret of Perfect Beauty and Strength of Woman.

"Genuine Ideal DILAPEX PESSARY.

"The most perfect instrument designed for the relief of sterility and to dilate and rapidly cure the female cervix in case of stenosis and almost all other vaginal troubles.

"DR. LA MEMES DILAPEX UNGUENTINE For Itching Piles and Eczematous condition accompanying it around the anus. This wonderful and modern treatment effects instant relief and is guaranteed to give perfect satisfaction.

"Do not confuse Dilapex Unguentine with the hundreds of so called pile remedies and cures now being advertised."

"Dr. La MEMES RADEX VAGINAL JELLY IS UNIQUE. It has many imitators but there is no other vaginal jelly duplicating all of its excellent qualities.

"The last word in vaginal antiseptic. Its composition and method of application makes it the most practical and effective preparation known to science."

"Producing in a natural and most satisfactory manner complete destruction of all germs present."

**"DR. LA MEMES CAPSOLETS FOR REDUCING OVERWEIGHT.** A safe, Effective and Rational Treatment.

"This is not a treatment that is harmful but is a meritorious product and remedy par excellence for the overweight man or woman who combats inclination to excess flesh in an endeavor to be prime and fit and agreeably presentable."

**"THE FRENCH WOMB SUPPORTER.** A Blessing to Womankind \* \* \*

"It affords a convenient and prompt means of cure to those afflicted with prolapsus (falling of the womb) Leucorrhœa (whites), and in the ready cure of the ulceration of the mouth and neck of the womb, so commonly the living torment of delicate women.

**"DR. LA MEMES FAMOUS FRENCH PERIODIC CAPSOLOIDS.** A Safe and Reliable Remedy For the Relief of Long Standing Suppressions, Painful Menses and Irregularities.

**"DR. LA MEMES FRENCH GLAND TABLETS.** Happiness and Contentment Can Be Yours!

"Sexual indifference in women, doctors say, is due very frequently to deficiencies in glandular secretions, particularly of the ovaries—those marvelous glands that give a woman her appeal, her charm, her grace, that make for feminine beauty and those other attributes that make her winsome.

"**DR. LA MEMES' GLAND** Tablets are a combination of SEVERAL different gland substances, including ovarian substance, the purpose of which is to aid and tone up certain ductless glands that may be weak and to restore a more normal balance of the endocrine system. This means more pep, vitality and strength for the women and a more normal functioning of the female organism."

which representations are held by the Federal Trade Commission to be incorrect and misleading, to the injury of the public and of competitors, in that the text indicates to readers that certain of these products are effective contraceptives or abortifacients whereas the formulæ submitted disclose that they cannot be depended upon to prevent conception or to produce abortion; that there is not and never was any such person as "Dr. La Meme"; that said preparations and devices have not the curative or the germicidal properties claimed for them and are neither imported from France nor of French origin, but are merely stock products manufactured by wholesale drug houses,

from which respondent buys them, having no laboratories of his own, as represented.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) Either directly or inferentially, that respondent's products are to be relied upon either as contraceptives or as abortifacients;
- (b) That "Dr. La Meme" or any other fictitious personage has ever had anything to do with these products;
- (c) That said products, or any of them, are of French origin or have been imported from France or any other country, unless and until such be the fact;
- (d) That any of said products is "famous" or is "unique" or has "many imitators";
- (e) That said Dilapex Pessary is a positive cure for suppressed menstruation, leucorrhoea or any other ailment, or provides a method bringing certain relief, or has "never been known to fail", whatever the cause of the trouble or of how long standing;
- (f) That respondent's Antiseptic Cones are an "absolutely reliable and infallible germ-destroying remedy", or that they destroy any germs at all, or make the spread of germs and disease impossible, or "change live germs into inert matter;"
- (g) That any medicine is a germicide which merely "renders germs inert or harmless or will prevent their spread";
- (h) That respondent's product is the only medicine known to science which has a "specific action" on germs, or that it does have any specific action, or that it "absorbs" germs;
- (i) That respondent's antiseptic cones will cure—  
Most all diseases of women or female weaknesses, or  
Ammenorrhoea, or  
Dysmenorrhoea, or  
Inflammation and Ulceration of the Womb, or  
Nervous Prostration, or  
Backache, or  
Leucorrhoea, or  
Menorrhagia, or  
Prolapsus Uteri, or



All, or any, Inflamed and Congested Conditions of the Mucous Membrane, the Vagina and the Womb;

- (j) That the Dilapex Pessary will cure stenosis and "almost all", or in fact any other vaginal troubles;
- (k) That Dilapex Unguentine effects instant relief or is in any way different from the standard brands against which respondent has cautioned the reader;
- (l) That Radex Vaginal Jelly has any radium qualities as implied by its name, or that it is either the most practical or the most effective preparation known to science, or that it produces complete destruction of all germs, or of any germs, present;
- (m) That said Capsulets for Reducing Overweight constitute either a safe or an effective or a rational treatment for the elimination of excess flesh;
- (n) That said French Womb Supporter will cure either prolapsus or leucorrhoea or ulceration of the mouth or neck of the womb;
- (o) That the Periodic Capsuloids constitute either a safe or a reliable method of bringing about menstruation;
- (p) That the so-called French Gland Tablets can restore the functioning of the female organism or can provide pep, vitality, and sexual strength to any woman;

and all representations or statements equivalent thereto in form or substance. (Jan. 23, 1933.)

0469. Publisher—Needle Arts and Crafts.—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of needle arts.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements and agrees:

That said publisher has no interest, right, or title in said advertisement, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest, it hereby waives its right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission;

That said publisher waives its right to be made a party respondent to said proposed complaint against the advertiser herein named for the protection of any such right;

That both as to the Federal Trade Commission and the advertiser herein named, it waives any such right which may be adversely affected by any cease and desist order the commission may make or

issue upon such complaint against the advertiser touching the subject matter of said proposed complaint;

That in favor of the Federal Trade Commission and the advertiser herein named, it hereby waives any such right which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid relating to the subject matter of said proposed complaints. (Jan. 23, 1933.)

0470. **Vendor Advertiser—Flesh Food, Tissue Builder, etc.—A. C. Liepe Pharmacy, Inc.**, a corporation, advertising over the name of Mme. Renee Renault, vendor-advertiser, of Milwaukee, Wis., is engaged in selling a cream alleged to build body tissue, and in advertising represented:

**“Improve Your FIGURE. Just Give Me 10 Minutes A Day.**

**“Are you dissatisfied with your figure? Are you flat chested or thin? Or is your form too full and embarrassing? Creme Treatment No. 1 aids in filling out hollowness and developing round, graceful curves where needed. Creme Treatment No. 2 helps to reduce surplus flesh and is used to develop a youthful figure. Fashion demands natural proportioned neck, chest, arms, legs and hips.**

**“With this letter I am sending you a sample tube of my CREME No. 1. Rub a tiny bit of it into your palm. Notice how it penetrates into the skin. When this rich creme is used according to the directions which I furnish with my regular treatment, it aids in gently stimulating tissue cells, tends to invigorate muscles and helps to develop healthy, firm flesh. Of course, this sample tube alone cannot bring you the results you want, but it will prove to you the rich quality and almost magical power that it contains. It will serve as an introduction to a shapely, graceful and feminine body.**

**“Perhaps there may be hollows in your neck that you want filled out. Or if your legs are unshapely, my method is planned to help develop shapely, flowing curves that will even thrill you, as you slip on your hose. Too, if your arms are thin, even bony or unshapely, my treatment should round them out into lovely, graceful curves.**

**“TEN MINUTE-A-DAY BODY BEAUTIFIER—MY CREME TREATMENT is the most sensational external method ever created for improving the form. It is offered to American women exclusively by Mme. Renee Renault. Two different types of creme treatments are presented, each of which meets a Course to help build firm flesh wherever needed.**

**“MME. RENEE RENAULT CREME TREATMENT NO. 1. Aids in Building FIRM TISSUES. This creme penetrates deep into the skin. Marvelous aid for filling out hollows and**

bringing forth full rounded curves when used according to directions.

"MME. RENEE RENAULT CREME TREATMENT NO. 2. Aids in Reducing SURPLUS FLESH. This is a very remarkable treatment. When used according to directions and when massaged into the parts of the body that are burdened with surplus flesh, the creme quickly melts into the skin.

"CONTOUR CREME NO. 1. This creme has been regarded as a food for your skin. It is regarded as one of the most nourishing preparations ever created. Deep down into the skin and in underlying tissues this creme tends to stimulate tissue cells, gives them nourishment, invigorates muscles and when used according to my simple directions, aids in the building of firm, healthy flesh on any part of your body.

"CONTOUR CREME NO. 2. Over-large, drooping breasts, as well as surplus flesh on arms, legs, chin and hips respond to the stimulating effect of this remarkable preparation, when used according to my directions.

"So I am going to give you a very, very pleasant surprise by reducing the price of my regular, large size tube of Mme. Renee Renault CREME TREATMENT to only \$3.00. This special price includes my complete body beautifying course; the very same you would get if you were to pay five dollars as originally priced.

"To prove to you that my CREME and Reducing Course may improve any part of your body, I am going to send you my regular complete five dollar treatment. All I ask you to do, is send me one dollar to help cover my cost of packing, mailing and clerical work attached etc. There is nothing more for you to pay."

which representations are held by the Federal Trade Commission to be incorrect and misleading, to the injury of the public and of competitors, inasmuch as the ingredients contained in these products have no capacity to penetrate the flesh nor any physiological effect in building or reducing flesh, but in either case act merely as a lubricant to expedite massaging.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That creme treatment no. 1 aids either in filling out hollows or in developing round, graceful curves;

- (b) That creme treatment no. 2 either helps to reduce surplus flesh or is used to develop a youthful figure;
- (c) That a sample is given free where a charge is made "to cover mailing costs" or otherwise;
- (d) That said creme penetrates into the skin;
- (e) That the use of said creme will develop either shapely legs, or rounded arms, or lovely, or graceful or flowing curves; or that it will serve any purpose whatsoever beyond that of a lubricant for massaging;
- (f) That said creme treatment is the "most sensational external method ever created for improving the form", or that there is anything novel or unusual about it whatsoever;
- (g) That these two cremes are different from each other until such be the case;
- (h) That said creme "melts into the skin", either "quickly" or otherwise;
- (i) That said "contour creme":  
Is a food for the skin; or  
Is regarded as "one of the most nourishing preparations ever created;" or  
Stimulates tissue cells; or  
Gives underlying tissues nourishment, either deep down in the skin or elsewhere; or  
Invigorates muscles; or  
Aids in "building firm, healthy flesh on any part of the body"; or  
Stimulates a response in over-large, drooping breasts, or surplus flesh on arms or legs or chin or hips; or  
Causes under-nourished muscles to tighten or regain their energy;
- (j) That a price is special so long as it is regularly offered to all prospects at a certain stage in the negotiations for sale, and especially where further reductions follow in form letters;

and all representations and statements equivalent thereto in form or substance. (Jan. 28, 1933.)

0471. Vendor-Advertiser—Feminine Hygiene Product.—J. E. McRorey, trading as Minoko Co., vendor-advertiser, of Kansas City, Mo., is engaged in selling a feminine hygiene product designated Minoko Regulators, and in advertising represented:

"FEMININE HYGIENE. Don't Suffer or Worry every month because of unnatural conditions. Get safe relief in 3 or 4 days with Minoko Regulators. A Doctors favorite prescription. No interference with duties.

"It is only for women, as it deals solely with affections peculiar to the female sex. In this treatment we offer you a formula that has stood every test to which it has been subjected.

"The prompt use of Minoko Regulators should bring about a perfect harmony of conditions and soothe and relieve you in a harmless, healthful, satisfying way; bring about a natural, painless flow, fill your life with peace and joy and make you a stronger, happier woman. Safety, certainty and reliability are recommendations well worth considering."

some of which representations the Federal Trade Commission deems misleading to the injury of the public and of competitors in that the text indicates to readers that this product is an effective contraceptive or abortifacient, whereas the formula submitted discloses that said preparation is not entitled to the classification of a contraceptive or an abortifacient and that it cannot be depended upon to prevent conception or to produce abortion.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from describing, labeling, branding, or designating same either inferentially or otherwise as an effective contraceptive or abortifacient. (Jan. 28, 1933.)

0472. Vendor Advertiser—Asthma Compound and Asthma Cigarettes.—J. H. Guild Co., Inc., vendor-advertiser, of Rupert, Vt., is engaged in selling Dr. Guild's Green Mountain Asthma Compound and Asthma Cigarettes, and in advertising represented:

"ASTHMA. What CAN I do to get relief? Try inhaling the pleasant smoke vapor of Dr. J. H. Guild's Green Mountain Asthma Compound. Thousands rely on it. Quickly soothes and relieves Asthma—also catarrh. Standard remedy at all druggists. Originated in 1869 by Dr. Guild, specialist in respiratory diseases."

That said compound is an effective treatment for asthma and catarrh is held by the Federal Trade Commission to be incorrect and misleading, to the injury of the public and of competitors, in that the ingredients used, while of some value in soothing and temporarily relieving the severity of the spasms in cases of bronchial asthma, are ineffective in treating the cause of either asthma or catarrh, or in preventing the same.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representa-

tions and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from describing, labeling, branding or otherwise designating same as a treatment for either asthma or catarrh, or for conditions, attacks, paroxysms or spasms other than those designated as asthmatic.

This advertiser also represents that it has revised its advertising literature by eliminating the word "asthma" and substituting therefor the words "asthmatic attacks" and in the name of its preparation has substituted the word "asthmatic" for "asthma". (Jan. 28, 1933.)

0473. Vendor Advertiser—Tablets for Ulcers, Hyperacidity, Indigestion, Gastritis, Sour Stomach, Etc.—Wallace, Incorporated, vendor-advertiser, of Los Angeles, Calif., is engaged in selling Wallace's Tablets for ulcers, hyperacidity, indigestion, gastritis, sour stomach, etc., and in advertising represented:

"Stomach ULCERS. If you have ulcers, hyperacidity, indigestion, gastritis, sour stomach or belching \* \* \*

"Wallace's Tablets will relieve such conditions quickly and permanently.

"STOMACH TROUBLE? Stop gastritis, sour stomach, belching, hyperacidity, indigestion and ulcers.

"Wallace's Tablets are pharmaceutically correct, bear the medical justification of physicians and are ABSOLUTELY GUARANTEED!

"Unexcelled for stomach disorders" and "the same scientific safeguard of your stomach. A scientifically compounded pharmaceutical remedy intended for the quick and permanent relief of stomach or Duodenal ulcers, Gastritis, Acute indigestion, Hyperacidity, Bilioussness, Bloating or Belching."

which representations are considered misleading in that the medical advice received by the Commission based upon this formula is to the effect that said preparation while of some benefit in relieving hyperacidity, sour stomach, belching, acid eructations and as a mild laxative, nevertheless would be of no benefit for stomach ulcers (whether induced by hyperacidity or otherwise), or for the other conditions for which it is recommended.

The respondent represented it had definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Com-

mission; and in particular that it will not be represented as a competent treatment for stomach or duodenal ulcers, gastritis, bilious bloating or acute indigestion. (Jan. 28, 1933.)

0474. **Vendor Advertiser—Booklets and Printed Matter on Mind Transference, Telepathy, and Hypnotism.**—William Michael, trading as The Paty Co., vendor-advertiser, of Los Angeles, Calif., is engaged in selling booklets and printed matter on mind transference, telepathy, and hypnotism, and in advertising represented:

**“INVESTIGATE TELEPATHY!** Send for a **FREE** amazing booklet that is causing a sensation among men and women. Due to its unusual contents, the stir it is creating has surpassed all expectation. This booklet will be sent to you **FREE** of charge or obligation. Send for it today!

**“UNUSUAL OCCULT FREE. SECRET POWER. IT MAY CHANGE YOUR LIFE! AMAZING BOOKLET FREE! LET US HELP YOU GET WHAT YOU WANT!** Read these testimonial letters from **SECRET POWER USERS:**

**“Getting results in business. Business good’.**—St. Joseph, Mich.

**“Secured a position.’**—Houston.

**“Used it to get money.’**—Momence, Ill.

**“Collected a debt owed me for two years.’**—Portage, Pa.

**“Doing nicely in heart affairs and business.’**—Chulota, Fla.

**“Making progress as salesman.’**—Auburn, N.Y.

**“Brought me financial gains. This power has helped me to write and today finds me in the literary field.’**—Waco, Tex.

**“FREE AMAZING BOOKLET! HOW TO REACH THE MINDS OF OTHERS.** An outstanding secret! Get what you want—know magic rule of riches. Win friends and success thru Telepathy, art of transferring thoughts to others, far or near. Watch friends marvel at your **NEW** personal power!

**“Every move you make, every word you speak, every deed you perform—is first patterned in thought. Think how powerful you would be, if you could design the thought pictures in the minds of others!**

**“Learn the rules for harnessing this tremendous force—Study the method for directing your own thoughts to the minds of others, far or near! The science of Mental Telepathy will teach you the secret of controlled broadcasting—will show you how to reach the minds of others.**

**“I have made two demonstrations so far in mental telepathy. The one I made last night was perfect. That is, in getting a woman to do something that she had very indignantly informed me earlier in the day that she would not do.**—Seattle, Wash.

"I know that God has something to do with this course."—  
Elberta, Ala.

"Mental Telepathy is the greatest development of the modern age. It takes the sensational discoveries made in the telegraph, telephone, and radio—and puts them to practical use in the wonderful world of psychic communication. It is startling in its power—revolutionary in its usefulness!

"Don't just wish for lifes' valued treasures—don't just hope for success in business or harmony in domestic affairs! Learn how to reach those who control your future, by means of Telepathy! Know how to impress your thoughts and desires upon their minds!

"Easy as A B C. Can call my boss any time. He had to come back. Results came within six hours time. Used telepathy method before calling on prospects and could sell them every time. Almost tripled my business last week. Searched for a friend and got returns next morning. My wish came true. Married my ideal of a husband, attracting him from 2000 miles away. Used telepathy to draw customers to my place of business. Thanks to telepathy, overcame my rheumatism. Business building up fast. My health is improving already. Very much improved physically. Am more successful in everything. Asked, by telepathy, why he didn't write, and in a few days received a letter. The simple methods used in the course make it really impossible for anyone not to get results. Obtained splendid results from raises in salary at different times. Important contract signed that had been flatly refused and was thought lost. Is far superior to the telephone because no person can listen in and get your message and reveal it to others. Collected two bills and never went near them. Can almost make life give forth whatever one wishes.

"Even the Kings and Queens of mediaeval Europe, who offered dukedoms in return for the power of this magical art, could not hope to learn its secret. The 'Sorcerers', whose aid they besought, willingly exerted its influence upon them at a high price, but refused to divulge the secret of how to use it.

"That which puzzled the world for centuries and for which royalty once willingly paid the price of dukedoms, is now available to anyone sufficiently interested in acquiring it, for a few hours' study.

"Unbelievable stories of witchcraft as practiced in early New England are to be found in the archives of American history. A few short years ago, witch burnings were a common occurrence in the United States. The history of Salem, Massachusetts, relates many such happenings. Fearing those who were gifted



with this divine power, the people burned and tortured them. Yet, today, this same 'sorcery' is in common use, and those who understand it are respected and considered to be of superior intelligence.

"Somehow, for some reason, it seems that the secrets of telepathy have so far been reserved for a chosen few.

"Many regard it as a mysterious and wonderful power that only the very learned can hope to acquire. On the contrary, the principles of telepathy are so simple that anyone with ordinary intelligence may understand them.

"Nobody can truthfully say anything unfavorable regarding any of the things of which telepathy consists. There is nothing wrong in them. They can cause no one, not even a child, any harm. Since telepathy is intended for good, it is very difficult to accomplish evil through its use. Consequently, the science of telepathy does not conflict in any way with any religious creed. You do not need to be gifted with any special talents in order to learn telepathy, nor do you have to be well educated.

"There is no reason why the future should not make telepathy as common as the telephone and telegraph.

"Thousands of others in many parts of the world have studied this course and you can see from the testimonial letters which I have received, that they were able to understand and apply the great truths contained in this course for their many different problems.

"I want you to discover the simple methods thousands have used to direct the actions of others to help them get what they want from life.

"I am positive, so absolutely confident, that my course will do the same for YOU, as it has done for others \* \* \*.

"In my course, 'A Miracle a Day,' you may learn how to implant messages on the minds of others—friends, relatives, associates and even strangers. I have made the basic principles of this great science so clear, so simple to apply, that Mental Telepathy may be understood by anyone of ordinary intelligence."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That any instruction in telepathy or kindred subjects is to be had "free", unless and until such be the fact;

- (b) Inferentially or otherwise, that by the use of a free booklet one may learn to send his thoughts to others, either far or near; or may develop any unusual occult or secret power; or get what he wants;
- (c) That by the use either of such free booklet or of the printed course which it advertises or of any other instructions offered by respondent, may any person of common mentality master the subjects of thought transference (and hypnotism) or produce phenomena thereby;
- (d) That by a few hours' study of respondent's course of instructions, anyone sufficiently interested may acquire the magical art for which mediaeval kings and queens offered dukedoms in vain;
- (e) That any person practising sorcery or witchcraft is respected, or that the student of respondent's course will acquire "this divine power";
- (f) That no special gift or talent or education is necessary for one to practice telepathy and/or hypnotism;
- (g) That thousands who have studied this course have thereby directed the actions of others to help them get what they want from life;
- (h) That the use of telepathy can cause no harm to anyone, or that it is difficult to accomplish evil through its use;
- (i) That by the study of respondent's course one may  
 Get a woman to do something that she had very indignantly refused to do earlier in the day; or  
 Impress one's thoughts and desires upon the minds of others; or  
 Implant messages in the minds of even strangers; or  
 Get results in business; or  
 Secure a position; or  
 Collect debts; or  
 Head off a mortgage foreclosure; or  
 Get money; or  
 Succeed in heart affairs; or  
 Bring financial gains; or  
 Become a successful writer; or  
 Astound friends by one's sensational power; or  
 Call one's boss at any time; or  
 Sell prospects every time; or  
 Find a lost friend; or  
 Attract a new husband from 2,000 miles away; or  
 Draw customers to one's place of business; or  
 Overcome one's rheumatism; or  
 Improve one's health; or

Persuade a negligent correspondent to write; or  
 Obtain raises in salary; or  
 Procure a signed contract that had been flatly refused;

or

Collect bills without going near the debtors; or  
 Can make life give forth whatever one wishes;

- (j) That it is really impossible not to get results by using respondent's methods; or that God has something to do with this course;
- (k) That no person can listen in and get your telepathic message and reveal it to others;
- (l) That a reduced price is a "special" price where the same is offered to all prospects at a corresponding stage in the negotiations for sale; or that such offer is for a "limited time" unless it be withdrawn and sale refused for less than a higher price after the expiration of such time;

and all representations and statements equivalent thereto in form or substance. (Jan. 28, 1933.)

0475. **Publisher—Face-lifting appliance.**—The publisher of a theatrical magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of a face-lifting appliance.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0476. **Publisher—Disinfectant.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of a disinfectant.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Com-

mission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0477. **Publisher—Greeting and Holiday cards.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of greeting and holiday cards.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0478. **Publisher—Stationery.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of personal stationery.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0479. **Publisher—Lighter.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a lighter.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publica-

tion of such advertisements that he cares to defend before the Commission and waves the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0480. **Publisher—Gas Stove Utensil.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a gas stove appliance or utensil.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0481. **Publisher—Gas Tank Lock.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a gas tank lock.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0482. **Publisher—Christmas Cards.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of Christmas cards.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0483. **Publisher—Flower Beads.**—The publisher of a magazine for agents of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of flower beads.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0484. **Publisher—Christmas Cards.**—The publisher of a magazine for agents of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of Christmas cards.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0485. **Publisher—Auto Tire Patcher.**—The publisher of a magazine for agents of wide interstate circulation, printed, published, and cir-

culated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an auto tire patcher alleged to be shock proof.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0486. **Publisher—Christmas Cards.**—The publisher of a magazine for agents of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of Christmas cards.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0487. **Publisher—Electric Advertising Clock.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of electric advertising clocks.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or

other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0488. **Publisher—Christmas Cards.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of Christmas cards.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0489. **Publisher—Automatic Beater or Whipper.**—The publisher of a magazine for agents of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an automatic beater or whipper.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 28, 1933.)

0490. **Vendor-Advertiser—Imitation Diamonds, Gems, and Cheap Jewelry.**—Francis E. Lester, trading as Mexican Gem Importing Co., vendor-advertiser, of Monterey, Calif., is engaged in selling imitation diamonds, gems, and cheap jewelry, and in advertising represented:

“RUBY GIVEN To introduce our imported Mexican Blue-Flash Gem, the only low priced gem exactly matching genuine diamonds with same blue-white brilliancy and rainbow fire, guaranteed for life, we'll send this beautiful, flashing, fiery red Mexican Ruby. Just clip this ad, mail with your name, address



and 10¢ to partly cover handling cost and we'll mail with catalog of gems and special half price offer."

"This Gem Free.

"Diamond Ring. Reproduction in 14 karat Solid Gold \$3.98.

"This \$3.00 Pearl Choker Free.

"A diamond expert valued your Gem at 1000 to 3000% more than I paid you for it—Impossible to distinguish your gem from the African Diamond.

"A \$56 Outfit for \$14.95, plus a \$5 Jewel Case FREE.

"The Mexican Blu-Flash Gem. The Only Guaranteed Satisfactory Substitute for the Genuine Diamond.

"No one can tell it from a Real Diamond; It is the most perfect reproduction of the genuine diamond \* \* \*.

"It is impossible to distinguish it from the African Diamond.

"Why should I wear a genuine Diamond \* \* \* when I can wear a Gem that exactly matches it costing just a few dollars?

"I am a jeweler and see little difference between your Gem and the genuine diamond.

"Exact reproduction of a \$350 Diamond-Platinum creation!

"Richly engraved Platino solitaire with finest quality 1-carat Blu-Flash Gem.

"FREE—this beautiful Mexican Lucky Stone Ring, with your order as explained in our letter attached. You cannot buy this gem at any price at jewelry stores. It is said to bring Good Luck and Good Fortune to the one wearing it.

"OUR MEXICAN BLU-FLASH GEM, the Original 'Mexican Diamond' really does match the Finest Genuine Diamond.

"If this little Good-Luck String could talk it would say 'Well, here I am! Use me, and I'll place on your finger a blue-white, dazzling Gem so beautiful you'll love it' \* \* \*.

"At once, I'll pick out the ring you choose from our catalog enclosed and see that it's mounted with the most perfect and beautiful blue-white FIRST-WATER Gem we have \* \* \*.

"A HALF PRICE OFFER with a LUCKY STONE ABSOLUTELY FREE.

"Choose from this catalog the ring you want. I'll mail it at once. On receipt, pay postman the small DEPOSIT of JUST HALF our regular price (plus a few cents mailing cost). \* \* \* And you get your Lucky Stone Ring FREE.

"Two New Ring Creations—14-kt. Solid White Gold set With Perfect, Full-cut, Blue-white, Dazzling Mexican Diamond Gems.

“Here are exact illustrations, slightly increased in size to show detail, of our two Newest Ring Creations set with the finest blue-white Gems we produce. The rings are solid 14-karat white gold finished in platinum effect \* \* \* The Mexican Diamond Gems (our Mexican Blu-Flash Gem) are of such intense blue-white brilliancy that they not only match the finest genuine diamond side-by-side but often excel it.

“ \* \* \* set with our SUPER-QUALITY Blu-Flash Gems \* \* \*.

“So closely do these New Ring Creations match the finest diamond-platinum rings costing \$500 to \$800 that we positively DEFY ANYONE to tell the difference when the two are placed side-by-side \* \* \*.

“AMAZING BARGAIN! Filigree Solitaire, platino finish, with dazzling blue-white  $\frac{3}{4}$  carat Gem in box set; retail \$5.00 ADVERTISING SALE PRICE 98¢.

“ \* \* \* ring but set with sparkling, brilliant Mex. Rose Diamond gems \* \* \*.

“S1130—This is our Gent’s massive Lafayette ring of exquisite workmanship, beautifully chased design in fine platino, reproducing a \$600 Diamond platinum job, set with a full 1-carat first water blue-white Gem of rare brilliancy \* \* \*.

“S1029—Almost given away! Discontinuing this Gent’s heavy gold-filled ring set with a fine quality fiery blood-red Ruby surrounded with sparkling small Blu-Flash Gems \* \* \*.

“These Sale Prices WILL NOT BE REPEATED!”

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That any article distributed by respondent is free or is given free unless such article is sent to the prospective customers without requiring the payment of any money, the rendering of any service or the purchase of any merchandise;
- (b) That any stone, which is not a genuine diamond, matches a diamond, is a reproduction diamond, cannot be distinguished from an African diamond or is the only satisfactory substitute for a diamond;
- (c) That a diamond expert valued an imitation diamond sold by respondent at 3,000 percent more than the price for which it was sold;

- (d) That a jeweler can see but little difference between an imitation diamond sold by respondent and a genuine diamond;
- (e) That no one can distinguish an imitation diamond sold by respondent from a genuine diamond;
- (f) That any ring not made of platinum and set with an imitation diamond is a reproduction of a diamond platinum ring;
- (g) That any article sold by respondent will bring good luck;
- (h) That any advertised prices will not be repeated unless such be the fact;

and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees in soliciting the sale of and selling said articles of jewelry to cease and desist from:

- (a) Designating or representing as a gem any stone that is not a precious or semiprecious stone;
- (b) Designating or representing any stone that is not a genuine diamond, as a "Mexican diamond" or using the word "diamond" in any way to designate or describe such stone unless modified by the word "imitation" or its equivalent;
- (c) Using the word "lucky" or its equivalent to designate or describe any article offered for sale by respondent;
- (d) Using any geographical term to designate or describe any article not imported from the country or place indicated by said geographical term;
- (e) Using the terms "platino", "platinum finish", or any other term phonetically similar to the word "platinum" to designate or describe any article not composed of platinum or not having a platinum finish;
- (f) Using the word "ruby" to designate or describe any stone that is not a genuine ruby;
- (g) Using the word "pearl" to designate or describe necklaces not composed of pearls, which are formed by natural processes in the shells of mollusks. (Feb. 6, 1933.)

0491. **Publisher—Pep and Vigor Tablets.**—The publisher of a detective-story magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of medicated tablets alleged to restore lost manhood and impart youth, vigor, and ambition.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in

proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 27, 1933.)

**0492-0494. Publishers—Laxative Tablets.**—The publishers of newspapers of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of tablets containing laxative and diuretic ingredients alleged to eliminate toxic material and stimulate the liver and drain the gall bladder and biliary tract, etc.

In stipulations filed with and approved by the Federal Trade Commission, the publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Feb. 27, 1933.)

**0495. Publisher—Merchandise—Fancy Groceries, Toilet Goods, etc.**—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of merchandise—fancy groceries, toilet goods, etc.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; and states:

That it has no interest, right, or title in said advertisement, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest, it hereby waives its right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission:

That it waives its right to be made a party respondent to said proposed complaint against the advertiser herein named, for the protection of any such right:

That both as to the Federal Trade Commission and the advertiser herein named, it waives any such right which may be adversely affected by any cease and desist order the Commis-

sion may make or issue upon such complaint against the advertiser, touching the subject matter of said proposed complaint:

That in favor of the Federal Trade Commission and the advertiser herein named, it hereby waives any such right which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaint. (Feb. 27, 1933.)

0496, 0497. **Publishers—Fancy Groceries, Cosmetics, and Toilet Goods.**—The publisher of (0496) two family magazines and (0497) a fiction story magazine, of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of fancy groceries, cosmetics, and toilet goods.

In stipulations filed with and approved by the Federal Trade Commission, these publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Feb. 27, 1933.)

0498. **Publisher—Merchandise—Fancy Groceries, Toilet Goods, etc.**—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of merchandise—fancy groceries, toilet goods, etc.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; and states:

That it has no interest, right, or title in said advertisement, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest, it hereby waives its right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission.

That it waives its right to be made a party respondent to said proposed complaint against the advertiser herein named, for the protection of any such right:

That both as to Federal Trade Commission and the advertiser herein named, it waives any such right which may be

adversely affected by any cease and desist order the Commission may make or issue upon such complaint against the advertiser, touching the subject matter of said proposed complaint:

That in favor of the Federal Trade Commission and the advertiser herein named, it hereby waives any such right which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaint. (Feb. 27, 1933.)

**0499, 0500. Publishers—Fancy Groceries, Cosmetics, and Toilet goods.**—The publishers of (0499) a family magazine, and (0500) six or more magazines, of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of fancy groceries, cosmetics and toilet goods.

In stipulations filed with and approved by the Federal Trade Commission, these publishers admit publication of such advertisements; disclaim any interest in the business of the advertiser or the publication of such advertisements that they care to defend before the Commission and waive the right to be joined as party respondents in proceedings instituted against the advertiser before the Commission, and agree to observe and abide by any cease and desist order based on such charges which may be issued; and also agree to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which they have notice. (Feb. 27, 1933.)

**0501. Publisher—Hair Tint Dye.**—The publisher of a movie magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a hair tint dye.

In a stipulations filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 27, 1933.)

**0502, 0503. Publisher—Toilet Articles—Puzzle Prize Contest and Gland Tonic.**—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged

to contain false and misleading statements, claims, and representations for (1) the manufacturer and vendor of toilet articles (puzzle prize contest), and (2) the manufacturer and vendor of a gland tonic.

In stipulations filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; and states:

That said publisher has no interest, right, or title in said advertisements, or in the business of said advertisers, proposed respondents herein, and if it may have any such interest it hereby waives its right to be heard thereon, both as to the advertisers herein named and the Federal Trade Commission:

That said publisher waives its right to be made a party respondent to said proposed complaints against the advertisers herein named for the protection of any such right:

That both as to the Federal Trade Commission and the advertisers herein named, it waives any such right which may be adversely affected by any cease and desist orders the Commission may make or issue upon such complaints against the advertisers touching the subject matter of said proposed complaints:

That in favor of the Federal Trade Commission and the advertisers named herein, it hereby waives any such rights which may be adversely affected by any stipulations hereinafter entered into by and between the Federal Trade Commission and the advertisers aforesaid, relating to the subject matter of said proposed complaints. (Feb. 27, 1933.)

0504. **Publisher—Hair Dye.**—The publisher of a daily newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of hair dye.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 27, 1933.)

0505. **Publisher—Tonic.**—The publisher of a large daily newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements,

claims, and representations for the manufacturer and vendor of an alleged tonic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 27, 1933.)

**0506. Publisher—Medicines.**—The publisher of a family magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a medical compound for worms.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; and states:

That said publisher has no interest, right, or title in said advertisements, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest it hereby waives its right to be heard thereon, both as to the advertiser herein and the Federal Trade Commission:

That said publisher waives its right to be made a party respondent to said proposed complaint against the advertiser herein named for the protection of any such right:

That both as to the Federal Trade Commission and the advertiser herein named, it waives any such right which may be adversely affected by any cease and desist order the Commission may make or issue upon such complaint against the advertiser touching the subject matter of said proposed complaint:

That in favor of the Federal Trade Commission and the advertiser named herein, it hereby waives any such rights which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaint. (Feb. 27, 1933.)

**0507. Vendor Advertiser—Waterproof Cement.**—The Peerless Waterproof Cement Co., vendor-advertiser, of St. Louis, Mo., is en-



gaged in selling Peerless waterproof cement, and in advertising represented:

"100 times stronger than glue.

"100 times stronger than glue, paste or other cements.

"100 times stronger than glue. Free from every fault and weakness of other cements and glues. Vastly superior.

"100 times stronger than glue—Peerless outsells and outperforms them all.

"100 times stronger than glue, etc. Not to be compared with ordinary glue, paste, adhesives or menders."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations.

The respondent represents to the Federal Trade Commission that it has definitely discontinued the advertising herein objected to, and does not intend at this time to resume such advertising in the future, and hereby stipulates and agrees that it will not do so.

It is also stipulated and agreed that if the said Peerless Waterproof Cement Co. 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 in the trial of the complaint which the Commission may issue. (Feb. 27, 1933.)

**0508. Vendor Advertiser—Cones and Antiseptic Jelle for Female use.**—G. H. French, trading as The Sanex Co., vendor-advertiser, of Minneapolis, Minn., is engaged in selling sanex cones and sanex antiseptic jelle for female use, and in advertising represented:

**"A MARRIED WOMAN'S SECRET. FREE Booklet.**  
GET this new amazing discovery for Feminine Hygiene—SANEX (suppository) cones. Non-injurious to delicate tissues and effective to kill all germs. Booklet, 'NOT BIRTH CONTROL BUT COMMON SENSE, sent with trial order of one package for \$1.00. Full directions—Plain wrapper. Dept. B-3, 529 S. 7th Street. SANEX CO., Minneapolis, Minn."

In a stipulation filed with the Federal Trade Commission the respondent represents to the Federal Trade Commission that he has definitely discontinued the advertising herein found objectionable and does not intend at this time to resume such advertising in the future; and further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that it will not be worded in such a manner as to lead the public to believe that these products are contraceptives or abortifacients. (Feb. 27, 1933.)

0509. **Vendor Advertiser—Watches.**—S. N. Freid, trading as King-Hill Co., vendor-advertiser, of Chicago, Ill., is engaged in selling a certain watch, and in advertising represented:

**“GREATEST OF ALL BARGAINS. JEWELLED MOVMT. \$15 Watch NOW \$3.33. PLATINUM EFFECT. SEND NO MONEY.**

“This dainty watch at less than wholesale. Why pay more and not get as good? The life-time case in platinum effect is richly engraved. Has genuine jeweled movement—an accurate timekeeper. Just send name and address. When watch comes pay postman \$3.33 plus postage.”

when in truth and in fact said watch contains but one jewel; has nothing of platinum about it; is not a \$15 watch; is not being offered for less than wholesale price; and the case is not engraved but merely stamped.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and the respondent represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (May 1, 1933.)

0510. **Vendor Advertiser—Skin Whitener and Hair Grower.**—M. G. Neuman, trading as Valmor Products Co., vendor-advertiser, of Chicago, Ill., is engaged in selling treatments for the skin and hair designated “Sweet Georgia Brown One Minute Skin Whitener and Valmor Triple Strength Hair Grower”, and in advertising represented:

**“BIG PAY to AGENTS \$\$\$.** Men and women wanted as agents. Sell Sweet Georgia Brown Hair Dressing, Hair Grower, Skin Whitener, 300 products. Write today for job.

“No more money worries or hard times when you are our agent. Make \$25.00 a week. Men and women wanted in every town to sell Sweet Georgia Brown Hair Dressing Pomade, Hair Grower, Skin Whitener, 300 products. Write today for job and **FREE SAMPLE CASE Offer.**

**“SWEET GEORGIA BROWN ONE MINUTE SKIN WHITENER—WHITEN YOUR SKIN LIKE THIS QUICK—EASY—SAFE IN ONE MINUTE LIKE MAGIC!**

**“TURN DARK SKIN LIGHT.** French Chemist discovers amazing, new skin Whitener. This astounding discovery actually changes color of skin before your very eyes.

**"SEE YOUR SKIN LIGHTEN SEVERAL SHADES.** What a thrill to see your skin getting whiter. Your friends exclaim at your new beauty. Sweet Georgia Brown ONE-MINUTE SKIN WHITENER is your secret.

"Don't let your own skin worry you. Use ONE-MINUTE SKIN WHITENER. You can have the light shade you want."

"Whitens in one minute and at the same time softens, soothes and nourishes.

**"HAVE LONG HAIR. HER HAIR MADE 4 INCHES LONGER.** 'Valmor' Triple Strength Hair Grower.

"GROW YOUR HAIR LONG. Have long, glossy hair that everyone envies and admires. See your hair grow longer in the magic of a few treatments with 'Valmor' Triple Strength Hair Grower. It quickly rids you of dandruff, stops itching scalp, makes your hair gleam with new beauty and lustre.

"GIVES THE HAIR A LIVING CHANCE. Apply 'Valmor' Triple Strength Hair Grower every single day and you will assist nature in feeding the roots and stimulating the scalp glands. Have long, straight, beautiful hair.

**"NEW FAST HAIR GROWER FOR HAIR HARD TO GROW.**

"You cannot straighten or comb short, crimped hair. You must grow it first. Use 'Valmor' Triple Strength Hair Grower.

"FEEDS THE HAIR ROOTS. No matter how tightly curled or dried out your hair may be 'Valmor' Triple Strength Hair Grower will limber and soften it, and bring new life and lustre.

**"SWEET GEORGIA BROWN HAIR DRESSING PO-MADE.** (Drawing captioned before use and another captioned after using.) Real pictures tell the story—Coarse Hair Made Soft—Amazing New Discovery.

**"SWEET GEORGIA BROWN SKIN TREATMENT BOX.** 'Jewel' Pearl Necklace Free. Price for Complete Treatment Box Only \$2.00."

which representations appear to be misleading and deceptive in that said skin whitener does not change the natural complexion or color of the skin, nor does it penetrate the skin or serve other than as a temporary coating to lighten the appearance of the skin; and that there is nothing in the ingredients composing the said hair grower which will actually cause the hair to grow faster than nature provides or feed or nourish the hair roots or rid one of dandruff.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or mis-

leading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That said skin treatment will either
  - Whiten the skin, or
  - Turn dark skin light, or
  - Change the color of the skin, or
  - Lighten the skin several shades, or at all, or
  - Nourish the skin tissues;
- (b) That such skin treatment is the product of a French chemist, or that it is either an amazing or a new or an astounding discovery;
- (c) That said hair treatment—
  - Enables one to have long hair, or
  - Causes the hair to grow 4 inches longer by the magic of a few treatments, or at all, or
  - Rids one of dandruff, or
  - Gives hair a living chance, or
  - Feeds the hair roots, or
  - Stimulates the scalp glands, or
  - Causes the growth of hair hard to grow, or
  - Makes long, straight, beautiful hair, or
  - Changes the nature of short, crimped hair;
- (d) That said hair dressing pomade will make coarse hair soft, or is either an amazing or new discovery, or that fanciful drawings constitute "real pictures" of the same person before and after using same;
- (e) That the probable earnings of an agent selling respondent's merchandise would be greater than the usual, ordinary compensation reasonably to be expected under normal conditions, or that such compensation is of any definite amount so long as the same is contingent upon the volume of the agent's sales;
- (f) That a necklace is a pearl necklace when such is not the fact, or that the same is given free so long as the price thereof is included in the total price for the complete treatment box;

and all representations and statements equivalent thereto in form or substance. (May 1, 1933.)

0511. Vendor-Advertiser—Tea.—Garfield Tea Co., Inc., vendor-advertiser, of Brooklyn, N.Y., is engaged in selling Garfield Tea and Densmore Tea, and in advertising represented:

"If you want a clear, attractive blemish-free complexion.

"Fired because of self-poisoning—dull, sluggish, always below par—only half alive physically and mentally \* \* \*. And the cause nine times out of ten is self-poisoning.

"Purify the polluted blood stream.

"Banish that insidious sluggish feeling immediately.

"If you would have the magnetic charm of sparkling eyes and a clear colorful complexion \* \* \*.

"Today 8 out of 10 are only half-alive.

"Today \* \* \* 8 out of 10 are half-sick.

"Bad breath, lowered vitality, complexion blemishes are mere effects. To correct these effects you must get at the cause.

"You simply drink a hot cup of this unique, pleasant-tasting tea nightly. In a short while your eyes begin to sparkle—you're filled with new energy and a new zest in life. The step becomes elastic, the brain clear and eager.

"Reduce weight.

"No need now to put up with the embarrassment of excess fat.

"If you wish to keep or attain a youthful, slender appearance and rid yourself of that unhealthy, unbecoming surplus fat

\* \* \*.

"The Densmore Method secures the desired results in the elimination of superfluous fat.

"Watch those superfluous pounds disappear.

"Makes it easy to rid yourself of the burden of fat."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That the use of said Garfield Tea will be effective in the treatment of any ailment or pathological condition unless clearly qualified to indicate that beneficial results may be expected only in those cases where the ailments or pathological conditions are caused by constipation or insufficient flow of urine;
- (b) That the use of said Garfield Tea will produce any beneficial result that may not reasonably be expected from the use of a preparation having laxative and diuretic properties;
- (c) That any definite proportion of persons are half sick or only half alive;
- (d) That generally the cause of sluggishness, impaired mentality, or an impaired physical condition is due to self-poisoning or constipation;
- (e) That the use of said Densmore Tea alone will cause a reduction in weight;

(f) That the use of said Densmore Tea in conjunction with the observance of any regimen prescribed by respondent will cause a reduction of weight in all cases; and all representations and statements equivalent or similar thereto in form or substance. (May 1, 1933.)

0512. **Publisher—Hair-Growing Device and Scalp Treatment.**—The publisher of a mechanical magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of hair-growing device and scalp treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 8, 1933.)

0513. **Publisher—Imitation Diamonds.**—The publisher of a number of magazines of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of Spanish diamonds—so-called.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 8, 1933.)

0514. **Publisher—Face Cream.**—The publisher of a film story magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of face cream for freckles, tan, blemishes, etc.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publica-

tion of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 8, 1933.)

0515. Vendor-Advertiser—Herbs, Roots, and Special Compounds for Medicinal Purposes.<sup>1</sup>—Joseph E. Meyer, trading as Indiana Botanic Gardens, vendor-advertiser, of Hammond, Ind., is engaged in selling at wholesale and retail, herbs, roots, and special medicinal compounds, printing, using, and supplying retail dealers with an almanac and a herbalist book, and in advertising, represented that certain herbs and roots were effective treatments and in many cases remedies for approximately all the ills common to man or beast, including anemia, appendicitis, arthritis, asthma, baldness, bleeding, blood poison, blood purification, bloody flux, boils, Bright's disease, bronchitis, burns, cancer, catarrh, chicken cholera, cholera morbus, chronic swellings, convulsions, colitis, cough (including whooping cough), cramps, delirium tremens, diabetes, diphtheria, dizzy spells, dog bites, dropsy, dysentery, ear trouble, eczema, epilepsy, erysipelas, eye troubles, falling hair, falling of the womb, felons, female ailments, gallstones, general debility, goitre, gout, gravel, hardening of arteries, hay fever, heart trouble, hemorrhoids, inflammation, influenza, itch, kidney troubles, liver troubles, malaria, measles, moles, mumps, nervous troubles, neuralgia, neuritis, obesity, pain, pellagra, piles, pleurisy, pneumonia, pyorrhea, rheumatism, rickets, ringworm, salt rheum, scarlet fever, scrofula, sinus trouble, smallpox, snake bites, sore throat, sores, spasms, stiff neck, stomach troubles, swelling limbs, tapeworm, tonsillitis, tuberculosis, typhoid fever, ulcers, varicose veins, warts, worms, etc., and also represents:

“Why use Poisonous Drugs when nature in her wisdom and beneficence has provided, in her great vegetable laboratories  
\* \* \* relief for most of the ills of mankind?”

“The Herb Doctor or Medicine Man's Method of Treating the Sick.

\* \* \* \* \*

“As a matter of fact, an honest doctor will admit that the latest medical science is not more uniformly successful in the treatment of many ills and maladies than the remedies discovered and used for centuries past by numerous tribes of Indians and other savage races.

<sup>1</sup> Subsequent to the publication of this digest of stipulation 0515, a much fuller statement of the stipulation was prepared, which may be had on application to the Commission.

“The treatments given in this book call attention to foods rich in vitamins. \* \* \* Growing in the sunshine absorbing the life-giving ultra-violet rays, or growing in the forest, absorbing the vital mineral salts from the earth—they present a form of medicine that human ingenuity cannot equal. Verily, our finest chemical laboratory cannot compare with the chemical laboratory of the simplest herb growing \* \* \*.”

which representations appear to be exaggerated, misleading, and deceptive in that they purport to offer treatment composed of herbs and plants for serious diseases and afflictions of mankind, holding forth the assurance or suggestion that one may by the use of said handbooks and the purchase of respondent's herb remedies treat himself successfully for practically every ailment to which the human race is subject; and furthermore, that the therapeutic properties attributed to said botanical medicines are in many cases not justified.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise over 317 statements, claims, and representations specified in the stipulation, and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees to eliminate all reference in his booklets and other advertising matter, to lungs, cancer, venereal diseases, and diabetes, unless such reference is limited to the advice that all sufferers from these diseases should be under the care of a competent physician.

Respondent also stipulates and agrees in future to confine his recommendations as to rheumatism and asthma only to the pains or attacks thereof.

Respondent stipulates and agrees moreover that he will discontinue the designation of all his products as “Indiana Herbs” and of himself as “The Herb Doctor.”

Respondent furthermore stipulates and agrees to eliminate from his booklets the purported and specified therapeutic properties attributed, respectively, to the various botanicals mentioned on pages 26, 27, 47, 48, 49, 50, and 51 of the above-mentioned stipulation, the Commission being of the opinion that these representations are largely incorrect, exaggerated, and misleading, with a capacity to deceive the public, to its prejudice and to that of respondent's competitors.



It is also stipulated and agreed that if the said Joseph E. Meyer 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 him in the trial of the complaint which the Commission may issue. (May 8, 1933.)

0516. **Vendor-Advertiser—Medical Preparation.**—Stirizol Co., vendor-advertiser, of Ossining, N.Y., is engaged in selling a medical preparation alleged to be a powerful germicide designated "Stirizol," and in advertising represented:

"Now I am Not So Dumb.

"I knew there must be some method for personal hygiene besides using carbolic acid or bichloride of mercury, and now I have found the really safe and simple way.

"Those poisonous antiseptics with their corrosive action burn and harden the delicate walls of the vagina, and that is all wrong and absolutely unnecessary.

"Of course, soap and water are not enough but with Stirizol in a douche you know you have just the proper medication that you need.

"Stirizol is pleasant—economical—simple and easy to use. It is very soothing and healing—and recommended by physicians and nurses because it is not caustic nor poisonous."

which representations appear to be misleading in that the text indicates to readers that this product is an effective contraceptive or abortifacient, whereas the formula submitted discloses that said preparation is not entitled to the classification of a contraceptive or an abortifacient and that it cannot be depended upon to prevent conception or to produce abortion.

Respondent stipulates and agrees in soliciting the sale of and selling said Stirizol in interstate commerce, to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from describing, labeling, branding, or designating same either inferentially or otherwise as an effective contraceptive or abortifacient.

It is also stipulated and agreed that if the said Stirizol Co., Inc., 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 in the trial of the complaint which the Commission may issue. (May 8, 1933.)

0517. **Vendor-Advertiser—Correspondence Courses in Psychology and Various Novelties and Curios.**—Alexander's Psycho Aid, Inc.,

vendor-advertiser, of New York City, is engaged in selling correspondence courses in psychology and various novelties and curios, and in advertising represented:

“Are You Hungry for Love and Honor That’s True Or is it the Proper Companion?”

“The World’s Greatest Protection Powder Made by One who Knows the Need of Others.

“Every human being upon the globe should be protected from their enemies makes no difference how Old or how Young you may be.

“You are not too Old or too Young to be protected. The Devil is always busy. So be prepared to meet him, before it is Too Late.

“Are you successful in everything you undertake to do?”

“Can you look the world in the face—solve all problems—get what you want—and fear no man or circumstances?”

“Is your home happy?”

“Is your companion true to you?”

“Are you earning sufficient money?”

“Is your health good?”

“Have you any problem to solve?”

“Have you any bad neighbors?”

“Are you in trouble?”

“Do you want influence?”

“Do you want power over anything?”

“Do you want to rule your friends?”

“Do you want to conquer your enemies?”

“Do you want to live easy?”

“Do you want love and honor from any special person?”

“Are you handicapped by jealousy?”

“Are you kept down by evil influence?”

“Do you owe any bills?”

“Are you lucky in everything you undertake to do?”

“Good luck is getting what you want.

“Did anyone take advantage of your kind disposition?”

“Do you want to make them pay you what you are entitled to?”

“Do you want your friend, husband, wife, relative or loved one to return to you?”

“Do you want any undesirable person to leave, to move or to go from you?”

“If you have these troubles write today.

“Why worry? Mark the Things You Want With Your Own Handwriting.

“Have you lived long enough to be satisfied to go?”

"I always rub my key to life over every pain I get, and I am still living, and I do not need the doctor, medicine, crutches or cane, and I am not asking you to buy my Secret Key to Life. It's your business if you want to live long.

"How to Get Anything You Want.

"I fully believe that this Course along with its Success Emblem to carry is bringing more happiness to heartbroken and suffering people than anything else in the whole world today. \* \* \* this wonderful method for your lifetime happiness.

"Thousands are using it and nobody has failed.

"How To Get What You Want Only \$10.00 \* \* \*

"These emblems are being used by thousands of people every-day and is recommended by the rich and the poor, black and white who are getting more and more successful each day.

"These emblems are fully guaranteed.

"Watch your happiness grow. Lucky Roots Herbs Powders. Satisfaction prolongs life.

"It matters not where you are, what you are, or what your circumstances are, the Lucky Hand Emblem will help you if you use its principles.

"Good Luck Powders. These POWDERS have been used by thousands of people whose troubles were just like yours, who suffered the lack of money, no jobs, unhappy homes, etc.

"Secret Wishing Beans to make your wishes come true.

"I myself have carried one of these mysterious Wishing Beans for more than two years in my own pocket and each day I've made my wish for SUCCESS.

"Sacred crystals for Crystal Gazing.

"Why continue to live in worry, fear, anger, and doubt? Wrecking your own health with the most stupid imaginations simply because you fail to know what your husband, wife, loved one, business partner, enemies, etc., are doing with someone else when out of your sight? Why spend your few pennies running to lying fortune tellers, etc., or anyone else to find out anything you want to know? Why not wake up and buy a crystal for yourself and learn to use it in 24 hours. They will stop, when they find out that you know everything about them.

"Easy Life Powders for men and women—old and young.

"What's on your face to help you to live easy? Why are you turned down everywhere you ask for a job? Why don't your husband, friend, wife or anyone else love you at sight?

"Is your face fixed? Nature fixed your face to suit itself. But you haven't fixed it to suit the people.

"I guarantee you a start in life.

"Love Powders For Quick Results. Why use these mysterious POWDERS in your home when everything is already going smooth. The reasons are: No. 1. A STITCH in time saves nine: No. 2. One who lives in a loving home, generally don't stop to think how important it is to keep it lovingly; No. 3. Its better to prolong lovingness than to have to try to regain lost love.

"SOLOMON'S SEAL. King Solomon ruled more women than any man that the Bible tells us about, the best we can learn is that He used this ROOT so much that its named after Him \* \* \*.

"Good Luck Roots. It's of no use to sit and cry over \* \* \*. You can get what you want too.

"SUCCESS POWDER. Everything I tried to do was a failure, and I began to think my whole life was a failure until I began to burn this wonderful Success Powder. Then my life began to change. I was successful in saving money. My home was more happy, my business began to increase and in a short time my worries were gone and I am now living in Peace and Happiness. Always burn a teaspoonful every Saturday of each week then watch your success grow day by day as you enjoy the happiness of life."

"Are you protected against everything and everybody? St. Christopher's Protection Pin \* \* \*.

"Do you Want A Lucky Hand with a Written Guarantee. Its principles will help you in health, happiness, love, money, peace, power, influence, control, jobs, business, worries and happiness at home."

"You can look the world in the face—Solve all problems—Get what you want and fear no man or circumstances—your home happy—your companion true to you—you can earn sufficient money—you can make your health good—you can solve any of your own problems—You can handle any bad neighbors—keep out of trouble—have influence—have power over anything—you can rule your friends—you can conquer your enemies—live easy—you can have love and honors from any special person you want—overpower jealousy—stop being kept down by evil influence—pay the bills you owe—you can enjoy good luck—no one can take advantage of your kind disposition—make everyone pay you what you are entitled to—make your husband, friend, wife, relatives or loved ones return to you—make any desirable person become your friend."

"Love affairs may be reconstructed by this scientific method."

"Get a Lucky Hand with a written guarantee. Its principles will help you."

when in fact such representations are misleading and deceptive.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That the possession and/or use of any of the articles sold by respondent will:

1. Bring good luck, or
2. Affect the health, or
3. Afford any protection, or
4. Enable one to be successful in love affairs, business or any other undertaking, or
5. Have any effect upon or in any way influence friends, enemies or neighbors of the possessor or user, or
6. Enable one to have any influence upon or to exert any power over another, or
7. Prolong life, or
8. Enable one to solve problems, or
9. Be of any assistance to a person in trouble, or
10. Influence or change the conduct or feelings of another, or
11. Affect in any way financial transactions, or
12. Produce or increase happiness, or
13. Make wishes come true, or
14. Enable one to have an easy life, or
15. Aid one in securing employment, or
16. Aid one in earning or securing money, or
17. In any other way be of help to the possessor or user;

(b) That the possession and/or use of respondent's so-called "key to life" by any officer or employee of respondent has resulted in eliminating or easing pain, prolonging life or improving health, or;

(c) That no one who has followed respondent's courses of instruction has failed, or

(d) That the possession and/or use of respondent's so-called "secret wishing beans" by any officer or employee of respondent has been of any benefit, or

(e) That the use of respondent's so-called "sacred crystal" will enable one to ascertain what another is doing or has done, or

(f) That the use of the root designated as "King Solomon's Seal" enabled King Solomon to rule women, or;

(g) That the burning of respondent's so-called "Success Powder" has produced or will produce beneficial results;

(h) That any of the articles sold by respondent is sacred;

(i) That any supernatural or magic influence will result from the use or possession of any of the articles sold by respondent; and all representations and statements equivalent or similar thereto in form or substance. (May 15, 1933.)

0518. **Publisher—Tablets for Women.**—The publisher of a story magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of periodic tablets for women.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 15, 1933.)

0519. **Vendor-Advertiser—Anti Uric—For Rheumatism, Etc.**—The Anti-Uric Co., vendor-advertiser, of San Francisco, Calif., is engaged in selling a medicine for promoting the functional activities of the urinary tract, designated "Anti-Uric", and in advertising represented:

"RHEUMATISM Can Be Cured!

SUFFERERS: Take new joy in living. At last a way to relieve your pains has been found.

ANTI-URIC, a natural preparation from roots and herbs, has brought permanent relief to thousands of sufferers everywhere in as short a time as twenty days!

IF YOU HAVE neuritis, sciatica, lumbago, inflammatory rheumatism, kidney ailment or general uric acid condition, you owe it to yourself to give ANTI-URIC a fair trial. Start using it today.

ANTI-URIC is sold by the Fenton Drug Co., and other good drug stores. Results guaranteed or money refunded.

ARTHRITIS—If your case is Arthritis, special instructions may be necessary. Write us, stating length and history of case. THE ANTI-URIC CO., 32 Front Street, San Francisco."

and in test advertisements inserted in various newspapers in the State of California:

"RHEUMATISM NOT INCURABLE. Thousands permanently relieved by this 26-year old, time-tested remedy.

"Anti-Uric is the dependable rheumatic remedy which has benefited countless thousands.

"If you suffer from any of the rheumatic ailments, such as rheumatism, lumbago, sciatica, neuritis, or general uric acid condition, try this famous old prescription without risk.

"You can end the pains and the aches, the stiffness and lameness by faithful treatment with this 26-year-old proven remedy. \* \* \* Anti-Uric, a dependable specific medicine \* \* \* It drives out the aches, the swelling and twitching. It reaches the cause and drives it out of your system. Anti-Uric Assists the blood stream to throw off uric acid and vicious poisons which are the cause of most rheumatic ills.

"END RHEUMATISM ONCE FOR ALL \* \* \* the amazing power of Anti-Uric to bring grateful relief—and complete recovery.

"Miraculous relief it has brought to sufferers from rheumatism, inflammatory rheumatism, neuritis, sciatica, lumbago—even arthritis! \* \* \* Anti-Uric is a specific remedy for rheumatic ills.

"Anti-Uric attacks rheumatism and kindred ailments by going to the source and correcting the conditions which cause them.

"Thousands of grateful men and women have reported how Anti-Uric has rid them of rheumatism, sciatica, lumbago, neuritis, inflammatory rheumatism—even arthritis.

"RHEUMATISM CAN BE CURED. If your case is rheumatism, matters not what kind, stomach trouble, blood disorders or kidney trouble, it behooves you to start with Anti-Uric at once.

and on respondent's printed letterheads:

**"ANTI-URIC, A REMEDY FOR RHEUMATISM GOUT-SCIATICA LUMBAGO ARTHRITIS AND NEURITIS."**

which representations appear to be misleading in that an analysis of the ingredients of this preparation shows that it is very limited in its therapeutic effect and can only be considered as a diuretic to the kidneys; as such, relieving conditions which are sometimes due to faulty elimination of urine including muscular aches and pains and stiff and aching joints; but that it would be impossible for a preparation of this type to have any effect on such disease conditions as neuritis, sciatica, rheumatism, kidney ills, lumbago, or arthritis, where the same are not due to an excess of uric acid.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the

sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) Directly or inferentially that rheumatism can be cured by the use of Anti-Uric;
- (b) That Anti-Uric provides a way to relieve rheumatic pains—"however caused";
- (c) That Anti-Uric brings "permanent relief" from rheumatic conditions;
- (d) That Anti-Uric is a remedy for any of the following rheumatic conditions except where caused by excessive uric acid:
  - Rheumatism,
  - Gout,
  - Sciatica,
  - Lumbago,
  - Arthritis, or
  - Neuritis;
- (e) That Anti-Uric drives out the poisons and impurities that cause rheumatic ills and the resulting aches, swellings, and twitchings, unless qualified that it is efficacious only for conditions of excessive uric acid;
- (f) That Anti-Uric is a dependable rheumatic remedy in all cases or that it has benefited "countless thousands";
- (g) That one can end the pains, the aches, the stiffness, or the lameness resulting from rheumatism by use of Anti-Uric;
- (h) That Anti-Uric reaches the cause of rheumatism except in cases resulting from excessive uric acid;
- (i) That Anti-Uric will "end rheumatism once for all" or will bring about "complete recovery"; or that it is "miraculous";
- (j) That Anti-Uric is a "specific remedy for rheumatic ills";
- (k) That Anti-Uric "corrects the conditions which cause rheumatic ailments", save in cases resulting from excessive uric acid;
- (l) That Anti-Uric will "rid" or "cure" anyone of rheumatism, sciatica, lumbago, neuritis, inflammatory, or arthritis;
- (m) That Anti-Uric is a competent treatment for "rheumatism matters not what kind."

and all representations and statements equivalent thereto in form or substance. (May 22, 1933.)

0520. Vendor-Advertiser—Medical Preparation.—Dr. D. A. Williams Co. (a corporation), vendor-advertiser, of East Hampton, Conn., is engaged in selling various medical preparations for rheumatic pains, kidney trouble, bladder weakness, etc., and in advertising represented:



**"FOR EXCESSIVE URIC ACID TRY THE WILLIAMS TREATMENT. 85 Cent Bottle (32 Doses) FREE.**

"Just because you start the day worried and tired, stiff legs and arms and muscles, and aching head, burning and bearing down pains in the back—worn out before the day begins—do not think you have to stay in that condition.

"Be strong, well, with no stiff joints, sore muscles, rheumatic pains, aching back or kidney trouble caused by body made acids.

"If you suffer from bladder weakness, with burning, scalding pains, or if you are in and out of bed half a dozen times a night, you will appreciate the rest, comfort and strength this treatment should give.

"To prove The Williams Treatment conquers kidney and bladder disorders, rheumatism and all other ailments when due to excessive uric acid, no matter how chronic or stubborn, if you have ever tried The Williams Treatment, we will give you one 85¢ bottle (32 doses) free if you will cut out this notice and send it with your name and address.

"DR. WILLIAMS Special Formula No. 707 and The Williams Treatment for Rheumatism, Lumbago, Neuritis, Neuralgia.

"Rheumatism is the name given to a group of characteristic symptoms that for many years has been attributed to excessive acidity of the system.

"The claims of self-interested parties, that rheumatic conditions are due to other causes, may be accepted or rejected by each individual sufferer, as he or she may elect. Neutralization of excessive body-acids is the foundation of all acceptable treatment for rheumatic conditions and the fact that rheumatism is only cured by antacid treatment may be considered the best proof that it is acid-caused.

"Lumbago is rheumatic pain in the back and loins—sciatica is rheumatic affection of the large nerve that runs from the spine through the hip and down the leg to the foot—neuritis is rheumatic inflammation of the nerves. One or several nerve trunks may be involved—neuralgia or nerve pain is usually of a sharp, stabbing character; an attack may last from a few minutes to many hours.

"Acid-caused pains are alike in character, regardless of the parts of the body in which they are felt; and they must be treated upon the same principle, no matter what scientific name they are classified by. Neutralization of excessive acidity is the foundation of successful treatment, and no treatment that does not effect this result has the qualities of success. Its power to overcome acidity in the system is one of the principal reasons

why THE WILLIAMS TREATMENT has been so great a success in rheumatic conditions.

"DR. WILLIAMS Special Formula No. 3 and The Williams Treatment for the STOMACH TROUBLES of Excessive Acidity, Indigestion, Acid Dyspepsia.

"Sour stomach means just one thing, and that is excess acid. The distressing symptoms that accompany this very prevalent ailment may be called indigestion, dyspepsia, gastritis, catarrh of the stomach or any other of the many terms used to indicate disturbances of digestion; the cause in almost all cases is excessive acidity.

"Nervous indigestion is nothing more or less than acid irritation of the nervous system in persons with sensitive or weak stomachs.

"DR. WILLIAMS Special Formula No. 3.

"This preparation is formulated for the relief of discomfort and pain arising from disturbed digestion, and for building up the tone and natural strength of the stomach.

"When used in connection with THE WILLIAMS TREATMENT for the neutralization of acidity of the system, its action is most satisfying."

when in fact such representations are considered incorrect in certain respects and exaggerated and misleading in others.

The respondent denies that it has made any false or misleading statements, but in a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That any of the respondent's preparations alone or in combination are competent treatments for—  
Stiff legs, arms or muscles;  
Pains in the back;  
Headache;  
Bladder weakness;  
Bladder disorders;

unless such representations are qualified by statements made in direct connection therewith clearly indicating that relief may be expected only in cases where said ailments are caused by an excess of uric acid;

- (b) Directly or by inference that rheumatism, sciatica, lumbago, neuritis, neuralgia, stiff legs, arms, muscles or joints,

pains in the back, headaches, kidney trouble or bladder weakness, are always caused by excess acid;

- (c) That the neutralization of excessive body-acids is the foundation of all acceptable treatments for rheumatic conditions, irrespective of cause;
- (d) Directly or by inference that the preparation designated as "Dr. Williams' Special Formula No. 707" is a competent treatment for rheumatism, lumbago, sciatica, neuritis or neuralgia, unless such representations are clearly qualified to indicate that the results which may be expected are limited to the relief of the aches and pains caused by those ailments;
- (e) That the preparation designated as "Dr. Williams Special Formula No. 3" is a competent treatment for stomach treatment for stomach troubles of excessive acidity, or will neutralize the acidity of the system unless such representations are clearly qualified to indicate that the results which may be expected are limited to the relief of discomfort and pain arising from disturbed digestion and building up the tone and natural strength of the stomach;
- (f) That any of respondent's preparations will be effective cures in every case regardless of how chronic or stubborn the ailment may be;

and all representations and statements equivalent or similar thereto in form or substance. (June 5, 1933.)



# DECISIONS OF THE COURTS<sup>1</sup>

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

## FEDERAL TRADE COMMISSION v. A. E. SMITH ET AL., AND ELECTRIC BOND AND SHARE COMPANY<sup>2</sup>

(District Court, S. D. New York. August 19, 1932)

COURTS KEY—No. 99(1).

Inferences from facts, not before court on previous hearing, at which objections to subpoenas duces tecum, issued by Federal Trade Commission, were sustained, can not retroactively give vigor thereto.

COMMERCE KEY—No. 16.

Legal, engineering, secretarial, fiscal, investigatory, and general advisory services, rendered to public utilities operating and holding companies by another corporation, held not "interstate commerce" within Federal Trade Commission Act (Federal Trade Commission Act sec. 6 (a), 15 USCA sec. 46 (a); Const. art. 1, sec. 8, cl. 3).

COMMERCE KEY—No. 33(1).

Corporation, acting pursuant to contract with supplier of electrical equipment, whereby it caused such equipment to be purchased by its subsidiary operating companies, thus giving rise to the transportation of such supplies across State lines, held "engaged in com[248]merce" within Federal Trade Commission Act.

COMMERCE KEY—No. 33(1).

Corporation, exercising control over subsidiary operating utility companies engaged in interstate transmission of electric power, by means of minority stock interest, by means of the presence of many of its officers and directors upon the boards of officers and directors of subsidiary companies, and by virtue of advisory and supervisory services rendered pursuant to service contracts with such subsidiary operating utilities, held "engaged in commerce" within Federal Trade Commission Act.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.

Corporation, entitled to protection of commerce clause of Constitution, is subject to Federal Trade Commission's investigatory power.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.

Federal Trade Commission's jurisdiction over corporation, rendering services to subsidiary corporations for fee based on their gross earnings, extends to all services for which fee covering interstate activity is charged.

COMMERCE KEY—No. 16.

Interstate transmission of electrical power is "interstate commerce" (Const. art. 1, sec. 8, cl. 3).

COMMERCE KEY—No. 16.

Rates charged for interstate transmission of electrical power are within regulatory power of Congress.

<sup>1</sup> The period covered is that of this volume, namely, July 18, 1932, to June 18, 1933, inclusive.

<sup>2</sup> Reported in 1 F. Supp. 247.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

Where corporation charges its operating subsidiaries a blanket fee based on a percentage of their gross earnings, for various services, some of which involve interstate commerce activity, the Federal Trade Commission has jurisdiction to investigate into the cost of rendering all of such services, whether interstate or intrastate in character, where the two are so commingled that they can not definitely be separated (Federal Trade Commission Act sec. 6 (a), 15 USCA sec. 46 (a); Const. art. 1, sec. 8, cl. 3).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

Investigatory jurisdiction of Federal Trade Commission is broad enough to include inquiry into the cost to a corporation of rendering all purchasing services to a subsidiary operating company which result in the interstate movement of supplies and materials purchased, and for which a separate fee is charged (Federal Trade Commission Act sec. 6 (a), 15 USCA sec. 46 (a)).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

Federal Trade Commission has jurisdiction to investigate into the cost to a corporation of rendering any services for which a fee is charged to a subsidiary operating company engaged in the interstate transmission of gas or electricity.

(The syllabus is taken from 1 F. Supp. 247)

Application by Commission for order directing A. E. Smith, comptroller and assistant secretary of Electric Bond & Share Co., and others, to attend before Commission and produce certain papers of the company. On respondents' objections to subpoenas duces tecum issued by Commission and questions propounded by counsel therefor to individual witnesses. Said objections sustained, and individual respondents directed to answer all questions relating to cost of certain services rendered by respondent corporation to subsidiaries.

*James T. Clark* and *J. Butler Walsh*, both of Washington, D. C. (*Robert E. Healy*, of Washington, D. C., of counsel), for petitioner.

*Simpson, Thacher & Bartlett*, of New York City (*John W. Davis*, *John F. MacLane*, and *Robert H. O'Brien*, all of New York City, of counsel), for respondents.

**KNOX, District Judge:**

The above-entitled proceeding is now before the court for the second time. When previously here, respondent's objections to certain subpoenas duces tecum issued by the Commission were sustained for the reason that, upon the disclosures then made to the court, the process was so all inclusive in its requirements as to be outside the boundaries [249] of the Commission's authority, and in violation of respondent's rights and privileges as conferred by the fourth amendment of the Federal Constitution. Upon the same occasion, I overruled objections made by respondent to certain questions which counsel for the Commission had propounded to individual witnesses.

The rulings then made were based upon an assumption that Electric Bond & Share Co.—

as to a part of its business was engaged in interstate commerce.

It was said that—

If the respondents wish to contest the propriety of this assumption, the matter will have to go to a master, or, if petitioner wishes an adjudication to the effect that the interstate business of the Electric Bond & Share Co. is so intimately associated and connected with interstate commerce that all the company's activities are subject to the jurisdiction of the commission, a reference will be required to establish the fact.

See *Federal Trade Commission v. Smith et al.*, 34 F. (2d) 323.

Thereupon the matter was referred to H. Snowden Marshall, Esq., to take testimony and report upon the interstate feature of the litigation. Before making a report, Mr. Marshall died. The parties subsequently entered into a stipulation of facts which, it has been agreed, shall stand in the place of evidence that might have been adduced before a master. Upon such stipulation, and the conclusions to be drawn therefrom, the court must now render a decision.

At the outset, notice should be taken that petitioner once more urges me to uphold the duces tecum subpoenas heretofore considered. That issue has gone against petitioner, and whatever inferences are here to be drawn from facts not previously before the court, they can not retroactively give vigor to process already found to have been without vitality.

In the light of the stipulation of the parties, attention should first be given to the question as to whether the business of Electric Bond & Share Co., or a substantial portion thereof, is of such character as fairly to bring it within the realm of interstate commerce. Such decision as may be rendered will be determinative of the propriety of the assumption in which indulgence was had when the case was first here. It, also, will serve as a declaration as to the investigatory authority, if any, of the Federal Trade Commission with respect to the affairs of Electric Bond & Share Co.

The stipulation shows the respondent to be a corporation of the State of New York, with its main office within this city. The corporation renders engineering, financial and advisory services of a technical and specialized character to certain groups of public utility companies and to certain holding companies, which, through stock ownership, control a number of specified public utility companies in the United States, and in foreign countries. Respondent also owns substantial investment interests in stock and other securities of companies controlling through stock ownership certain public utility companies in the United States, and elsewhere. It does not, however, own a majority of the voting stock of any company doing a public utility business in this country, or of any other company which

owns securities of any company doing a public utility business in the United States.

As respects the holding companies which enter into the present inquiry, respondent's stock ownership is as follows: American Power & Light Co., 21.73 per cent; Electric Power & Light Corp., 13.42 per cent; Lehigh Power Securities Corp., 13.25 per cent; National Power & Light Co., 20.77 per cent.

The corporate enterprises just enumerated hold from a majority to one hundred per cent of the capital stock of sixty-eight subsidiary operating companies. Approximately one-fourth of these companies sell some of their product in interstate commerce.

Both litigants agree that the aforementioned holding companies are nothing more than is implied in the descriptive term applied to them. They do not maintain separate offices, their affairs being carried on by the staff employed by respondent at its headquarters in New York. The corporate officers of the holding companies are largely interlocking.

The subsidiary operating companies have their own official organizations, boards of directors, and executives. In all cases, nevertheless, some of the official staffs of the subsidiaries are likewise officers of Electric Bond & Share Co., and in some instances these latter predominate. An example of the interrelationship existing between the various organizations is to be found in the fact in the years 1926 and 1927, the president of Electric Bond & Share Co., was, at the same time, a director of American Power & Light Co., and of seven of its operating subsidiaries; a director of Electric Power & Light Corp. and of two of its subsidiaries, and a director of National Power & Light Co., and of four other companies subsidiary thereto. Similarly, sixteen other officials of respondent were also officers or directors in a great number of the subsidiary holding and operating companies.

The stipulation likewise discloses the fifty largest holders of voting stock in the four holding companies. Among such stockholders are Electric Bond & Share Co., Electric Investors, officers, directors and employees of respondent, and other individuals closely associated with, or friendly to that organization.

From what has been made to appear to the court, it is plain that the services performed by respondent on behalf of the holding and subsidiary operating companies, and which, broadly speaking, relate to legal, engineering, secretarial, fiscal, investigatory, and general advisory matters, are not such as will here avail the petitioner. Without analyzing the services rendered by respondent within the foregoing classifications, I shall content myself by concluding that they have to do with activities which, under authoritative decisions, are not recognized as constituting interstate com-



merce. See *Graniteville Manufacturing Company v. Query*, 283 U. S. 376; *Hemphill v. Orloff*, 277 U. S. 537; *Moore v. New York Cotton Exchange*, 270 U. S. 593; *Blumenstock Bros. Adv. Agency v. Curtis Publishing Co.*, 252 U. S. 436; *Hall v. Geiger-Jones Co.*, 242 U. S. 539; *United States Fidelity & Guaranty Company v. Kentucky*, 231 U. S. 394; *New York Life Insurance Co. v. Deer Lodge County*, 231 U. S. 495; *Engel v. O'Malley*, 219 U. S. 128 and *Federal Baseball Club v. National League*, 259 U. S. 200.

When, however, the services performed by respondent for its associated and affiliated companies, in certain other capacities are scrutinized, the issue before the court may not be disposed of so summarily.

Attached to the stipulation as one of its exhibits is a contract between respondent and the General Electric Co., which was in force throughout the years 1926 and 1927, the period with which the present dispute is concerned. It relates to the purchase of electrical apparatus and equipment for use by a group of corporations designated in the contract as "subsidiary companies" of the corporate respondent. This contract first came into existence in 1912. It contains, inter alia, the following provisions:

That whereas, the General company is engaged in the manufacture of electrical apparatus and desires to sell, subject to the terms and conditions hereof, to the Bond & Share Co., and to the companies listed in schedule attached (hereinafter called subsidiary companies), which are engaged in the business of central station electric lighting or distributing electric power for other purposes, for its use and the use of the subsidiary companies, the apparatus manufactured by the General company for central station lighting or for other purposes and the Bond & Share Co. and said subsidiary companies are willing to buy such apparatus required by them from the General company.

Now, therefore, in consideration of the premises and other covenants hereinafter contained, it is agreed as follows:

First. The General company agrees to furnish to the Bond & Share Co. and to the subsidiary companies, for use only of said companies, electrical apparatus and supplies, including steam turbines and adjuncts thereto, and including turbine or motor-driven centrifugal exhausters and compressors, manufactured by the General company (but excluding incandescent lamps), required by the Bond & Share Co. and the subsidiary companies for its and their business of central station lighting or for other purposes for cash or on such other terms as may be agreed upon at the lowest current prices to its most favored customers purchasing in like quantities and under similar conditions. The prices, terms, and other conditions applying to various classes of supplies furnished by the General company under this agreement, shall be as set forth in the riders, schedules or subsidiary agreements which are or which shall hereafter be attached to and made a part of this agreement.

Second. The Bond & Share Co. agrees to cause to be purchased from the General company such electrical apparatus, supplies and turbines required by it or by the subsidiary companies in its or their [251] business of central station lighting or for other purposes. \* \* \*

Sixth. It is further agreed that the terms of this agreement and of the riders, schedules or subsidiary agreements which are, or which shall hereafter, be attached to or made a part of this agreement, shall apply to all companies not enumerated in attached schedule in which the Bond & Share Co. shall obtain ownership or a controlling or operating interest (providing the General company shall be free to sell to such company); and the Bond & Share Co. agrees to promptly notify the General company *in case they acquire ownership or a controlling or operating interest in any company not enumerated in attached Schedule.*

It is also agreed that *if at any time by reason of change in interest, ownership, or control, the Bond & Share Co. shall be unable to control the purchase of equipment by any of the subsidiary companies, due notice shall be given the General company and this agreement shall no longer be applicable to said subsidiary company.* [Italics mine.]

From time to time reprints of the agreement, carrying supplements containing the names of corporations entitled to the benefits of the contract, together with revisions of the lists of apparatus covered thereby, were furnished to Electric Bond & Share Co. The exhibit also includes "a supplementary agreement covering construction work" between respondent and General Electric Co. This latter document bears date of January 1, 1924, and was in force during 1926 and 1927, but it is of slight importance to the controversy, save to indicate that General Electric, if required, will furnish certain classes of workmen to respondent and its subsidiaries, at stipulated rates.

The purchase contract provided for the allowance of quantity discounts on the aggregate of all purchases as should be made thereunder. At the close of a specified contract period, checks for such discounts as had accrued under the agreement, and which had not previously been allowed, drawn to the order of the companies for whose accounts apparatus or material had been purchased, and proportionate thereto, would be forwarded by General Electric Co. to respondent. The latter in due course would forward the checks to the payees named therein, respectively, and retained for itself no portion of the discounts.

In passing, it may be noted that, although American Gas & Electric Co. and its subsidiaries are scheduled in the purchase agreement as entitled to its benefits, respondent did no purchasing for that holding company, or its subsidiaries during the years mentioned. As to them, therefore, respondent had no discount checks to distribute.

As construed by the parties to the agreement, the discounts were to be allowed on an "if, as, and when" purchase basis, and the contract imposed no obligation on respondent that purchases should be made from General Electric Co. in preference to other manufacturers of electrical apparatus and equipment. As a matter of fact, a similar purchasing arrangement, not in writing, was in force with

Westinghouse Electric & Manufacturing Co. during the years 1926 and 1927, and this was known to General Electric Co.

Notwithstanding, most of the purchases (in some classes of apparatus more than 90 per cent) were made from General Electric Co.

At this point mention must be made of the Phoenix Utility Co. All of its capital stock is owned by respondent, and its general (New York) office is manned entirely by officers and employees of respondent. This concern, acting on the requisition of the operating companies, made in pursuance of the terms of supervisory agreements with respondent, purchased apparatus within the years 1926 and 1927, of an aggregate value of more than \$5,000,000. This sum does not include the value of purchases made in connection with certain agreements of the operating companies relating to construction work. Purchases of this class of supplies, which were made by Phoenix Utility Co., on behalf of the operating companies, had a value of something like \$23,000,000. In practice, purchase orders of the subsidiaries were signed by the Phoenix Utility Co. as "purchasing agent" for the company that was to have the apparatus or material covered by the order. Shipments under such orders were made by the manufacturer or distributor of the apparatus or supplies direct to the company that was to use the same.

Most of the purchases made as aforesaid moved in interstate commerce.

Payment for material and supplies thus obtained by the operating companies were made by them either from their funds in [252] New York banks, or at their local places of business, as bills were rendered. Such payments as were remitted from the New York office were made by check of the operating companies drawn on a New York bank, signed by officers of the operating companies who also were officers or directors of respondent.

Bills for construction apparatus or material were sent, in ordinary course, to the field office of Phoenix Utility Co. and were paid at such office from funds then or theretofore supplied by the operating company.

Substantially all fees for services rendered by Phonex Utility Co. were paid to Electric Bond & Share Co.

As illustrative of the extent of the company's activities, and the manner in which they were carried out, I quote a number of clauses taken from its contracts with the subsidiary holding companies which, it will be remembered, control the operating units. In its contract with American Power & Light Co., the Electric Bond & Share Co. states:

*C. Supervision of operation of subsidiaries.*—We propose to furnish, at our expense, the services of our operating department, in charge of one of our vice presidents, including—

1. A "sponsor" who will be one of our operating specialists, who shall be known as "sponsor for — group, American Power & Light Co. properties." \* \* \*

4. Purchasing department, which will assist in the purchase of apparatus and material, and the routing and tracing of shipments. The subsidiaries will be included in the *large general purchase contracts made by us* for lamps, transformers, meters, etc., whereby, through the large volume of purchases, lower prices are secured. [*Italics mine.*] (Exhibit M, pp. 3, 4.)

The contract with the Electric Power & Light Corp. contains the following provisions:

20. We will serve your company in matters pertaining to purchasing and, where purchases can be made more advantageously by us than by your organization, we will conduct such purchases and fulfill all functions of a purchasing organization in so far as can be done in our New York office. For purchasing in connection with construction work, see section 28.

We maintain an information service through which we will transmit to your company information in regard to market conditions and other matters pertaining to purchasing.

21. We regularly negotiate and place blanket contracts and orders for equipment, material, supplies, etc., generally used by public utilities, and the requirements of your company will be included therein, thereby gaining for you the benefits of favorable discount, prices, and deliveries obtainable through large combined purchases and close contact with market conditions. \* \* \*

23. We will serve your company in matters pertaining to transportation of materials and supplies, and will route and classify shipments supplied against contracts or purchase orders placed for it. We will furnish information concerning classification and routing of commodities, insurance in transit, freight rates, proper procedure in the filing of freight claims and the checking and auditing of transportation invoices, etc.

28. We will, when authorized by separate agreement, procure ——— or other responsible contractor to do for your company construction or reconstruction work of any character or magnitude. So long as a construction organization is continuously maintained by such contractor on your property, new jobs may be added to existing contract as supplementary to it. Whenever the construction organization has, in its entirety, been withdrawn from your property, any work requiring its return must be covered by a new contract.

The services which will be performed in connection with such work will include organization and direction of the construction operations, field engineering, purchasing materials and equipment, obtaining construction superintendents, assembling the necessary construction forces and construction plant, keeping proper records and books of account and all other things necessary or incidental to consummation of the work.

Similar provisions are to be found in the agreement with the National Power & Light Co., and in the general form of service contract set forth in Exhibit 4001.

The foregoing recital engenders an insistent thought that through the interlocking relationship of the several corporations concerned, the Electric Bond & Share Co. had much to do with the determination [253] by its denominated subsidiaries as to when and where they should purchase apparatus, materials and supplies which were

required in carrying on their respective businesses, and also that, in what was done, the parent company acted in other than a purely brokerage capacity. The phraseology of the contract with General Electric Co. gives apparent recognition to the compulsory character of such influence as Electric Bond & Share Co. chose to exercise over the affairs of the subsidiaries. Under the guise of supervisory and advisory services, the parent concern was afforded an opportunity actively to promote purchases from General Electric Co. That it did so in great volume is obvious. Not only did it charge a fee for advisory and supervisory services performed on behalf of the subsidiaries, but, through the medium of its stock ownership, it became a beneficiary of such profits as accrued to the subsidiaries as a result of the purchases.

The contract with General Electric Co., it should be noted, contained this paragraph:

If \* \* \* the Bond & Share Co. shall be unable to control the purchase of equipment by any of the subsidiary companies due notice shall be given the General company and this agreement shall no longer be applicable to said subsidiary company.

Words such as "control" and "subsidiary companies" and the phrase "cause to be purchased," which also appears in another portion of the agreement when used in any contract, usually carry implications that are definite and easy to understand. In this instance, such implications gather emphasis from the corporate relationship existing between Electric Bond & Share Co. and its subsidiaries. The extent to which purchases were made, pursuant to the contract, together with the detail of their execution and shipment, tend to demonstrate that, in handling transactions of great volume and high value, Electric Bond & Share Co. was a ruling agent and actively participated in the interstate movement of commerce.

But, irrespective of all that has been said, Electric Bond & Share Co. insists that it is outside any and all jurisdiction of the Federal Trade Commission. In this, is the company right or wrong? If realities, rather than artificialities are determinative of the question, it is my belief that the company is wrong.

An examination of the decisions of the Supreme Court of the United States, dealing with the extent of the power of Congress over commerce among the States, discloses the error under which respondent labors.

In *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, a Tennessee corporation, pursuant to its practice of purchasing grain in Kentucky to be transported to and used in its Tennessee mill, made a contract for the purchase of wheat, to be delivered in Kentucky on the cars of a public carrier, intending to forward it to the Tennessee

destination as soon as delivery was made. The court held the transaction to be interstate in character, notwithstanding the contract was made and to be performed in its entirety in Kentucky, and that the possibility of a change of intention on the part of the purchaser with a consequent sale and consignment of the grain within the State of Kentucky would not affect the essential character of the transaction. In speaking of the scope of interstate commerce, the court said at page 290 of 257 U. S.:

Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages, *Brown v. Maryland*, 12 Wheat. 419, 446-447; *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 519. On the same principle, where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation. *American Express Co. v. Iowa*, 196 U. S. 133, 143.

In *Lemke v. Farmers Grain Co.*, 258 U. S. 50, a North Dakota association, in the usual course of trade, bought grain in that State, placed it on its elevator, loaded it promptly on cars, and shipped it to other States for sale. The grain even after loading was subject to be diverted and sold locally if the price was offered; but local sales were unusual, the company's entire market, practically, being outside North Dakota. It was held that the business, including the buying of grain in North Dakota, was interstate commerce, and that, as applied to this business, a North Dakota statute requiring purchasers of grain [254] to pay a license fee and to act under a defined system of grading, inspection and weighing, and subjecting the prices paid and profits made to regulation, was a direct burden on interstate commerce. In *Shafer v. Farmers Grain Co.*, 268 U. S. 189, a later statute of North Dakota having the same general purpose was held invalid as applied to the same association.

The foregoing cases, it will be noted, all involved *purchasers* who bought goods in sales that were completely consummated within a single State. If, as a practical matter, the Electric Bond & Share Co. be regarded as controlling purchases made under the contract with the General Electric Co. (and it agreed therein "to cause (apparatus, supplies, and turbines) to be purchased"), a conclusion that it is engaged in interstate commerce is irresistible.

And, indeed, if respondent be regarded as the broker or agent, and if, in connection with such engagement, one of its functions was to arrange for the interstate shipment of supplies to the operating companies, it would thereby also be engaged in interstate commerce.

In *Di Santo v. Com. of Pennsylvania*, 273 U. S. 34, plaintiff was authorized by four steamship companies to sell tickets and orders

for transportation entitling persons to passage to and from foreign countries, and to collect money for the tickets and orders sold. He was required to give bonds to the respective companies and to account for moneys received for the tickets, less a percentage for his remuneration. It was decided that the plaintiff was engaged in foreign commerce, and that, consequently, a state statute was invalid which required such ticket agents, other than railroad and steamship companies, to procure a license, pay a fee and file a bond as security against fraud. The court predicated its holding upon *Texas Transport Co. v. New Orleans*, 264 U. S. 150, and *McCall v. California*, 136 U. S. 104. In the first of these two adjudications, it was held that a state license tax could not be laid upon the business of a corporation which acted as agent for the owners of vessels engaged in interstate and foreign commerce, in soliciting and engaging cargo, arranging for delivery on wharf and for stevedores, issuing bills of lading, collecting freight charges and performing other incidental services. In the latter case, plaintiff acted as an agent in San Francisco for the New York, Lake Erie & Western Railroad Co., which operated a continuous line of road from Chicago to New York. His only duty was to induce people to take that route, if they were taking a trip east from Chicago. He did not sell any tickets for that route. Nevertheless, he was declared to be engaged in interstate commerce and it was accordingly held that a municipal license tax for the privilege of doing business in San Francisco was unconstitutional as applied to him.

At this point, note should be taken of the fact that, in the cases just discussed, the Congress had not specifically undertaken to exercise supervision or control over the matters which were there under review. Nevertheless, the Supreme Court believed them to be within the protection of the commerce clause of the Constitution (Art. 1, sec. 8, cl. 3). In the case at bar, the Congress has taken a step of affirmative character, even though it has not yet chosen definitely to regulate holding companies which, through intercorporate networks, control the destinies of subsidiary operating companies doing interstate business. In other words, it has enacted section 6 (a) of the Federal Trade Commission Act. Unequivocally, the Federal Trade Commission was vested with power—

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.

This enactment, at the very least, requires a conclusion that a corporation, whose activities are such as to give it the protection of the

Commerce clause under the decisions set forth above, should not be held to be beyond the reach of the Commission's authority.

Decisions of the courts upholding various State taxes, and others of a cognate nature, which are called to my attention in support of respondent's contention that Electric Bond & Share Co. is not engaged in interstate commerce, do not rule the question here presented. Most, if not all of them, dependent upon factors far more complex than a finding as to whether a particular corporation, in the light of definite evidence, is [255] engaged in interstate commerce. The question of the propriety of allowing a State to regulate a particular business in the absence of a regulation by Congress; of whether a particular regulation by Congress is a prohibition to the States; of how much, in fact, was regulated; of the actual economic effect of a tax—all of these factors, and many more, were under consideration by the courts in the cases cited by respondent, in their endeavor to delineate the sometime shadowy boundary between permissible State and Federal action.

But this case presents no such problem. A decision by this court that Electric Bond & Share Co. is engaged in interstate commerce, so as to subject it to the investigatory power of the Federal Trade Commission carries with it no concomitant denial of regulatory or taxing power upon the part of a State sovereignty.

This circumstance, when considered in connection with the decisions showing how much has been held to be included within the domain of interstate commerce, tends to clarify my conviction that Electric Bond & Share Co. is "engaged in commerce" within the meaning of the Federal Trade Commission Act.

But, say respondents, since the jurisdiction of the Commission is limited to interstate commerce, the intrastate business and affairs of Electric Bond & Share Co. are outside of the Commission's authority, even though concession should be made that the company, as to some matters, engaged in interstate trade. If intrastate trade could definitely be separated from that which is interstate, I should agree. For example, if the company charged its subsidiaries a specified fee for services rendered in connection with the purchase of apparatus and materials, it might well be that the investigation of the Commission should be limited to inquiries relevant to the reasonableness of such charges as were made upon this account. Such, however, is not the method of operation. The parent company makes a blanket charge for substantially all of its services, and this is based upon certain percentages of the gross earnings of the subsidiaries. The reasonableness of this charge can not be ascertained merely by inquiring into the cost of rendering the purchasing services. The cost of rendering other services for which a fee is charged, must also be determined, because they are inextricably involved with the cost of work.



having to do with interstate activity. The Commission's jurisdiction must extend, therefore, to all services for which a fee covering an interstate activity is charged. See *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194.

Lest it be forgotten, it is well to remind one's self that approximately one-fourth of the operating subsidiaries are partly engaged in interstate commerce in the sale or distribution of electricity or gas. That the interstate transmission of electrical power is interstate commerce is settled beyond doubt. *Public Utilities Commission v. Attleboro Steam & Electric Co.*, 273 U. S. 83. Although the interstate business of some of these subsidiaries is small, it comprises a substantial portion of the business of others. Rates charged for this power are unquestionably within the regulatory power of Congress. The fairness and reasonableness of rates in large measure depend upon the cost of furnishing the services. One of the costs of the operating subsidiaries is the charge which it pays to Electric Bond & Share Co. As to the pertinency of this factor, recourse may be had to the decision of the Supreme Court in *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133. Under that authority, the cost of the services which Electric Bond & Share Co. renders its operating subsidiaries, and for which it charges them a fee, is relevant to an investigation into the fairness of the rates charged by these companies for power transmitted across State lines. See also *Western Distribution Co. v. Public Service Commission of Kansas*, 285 U. S. 119.

As bearing upon the practical control of the subsidiary corporations by the parent concern, even though it does not hold a majority stock interest in the four subsidiary holding companies, attention is directed to *Delaware & Hudson Co. v. Albany & Susquehanna R. R. Co.*, 213 U. S. 435, and *United States v. Union Pacific R. R. Co.*, 226 U. S. 61.

Upon the basis of the control which respondent exercises over its subsidiary companies through such minority stock interests, as well as through the presence of many of its officers and directors upon the boards of officers and directors of the subsidiary companies, and in view of the character of the services rendered pursuant to the service contracts, petitioner asks me to disregard the corporate identities of the sub[256]sidiary companies, and to hold that "as the acts of the Electric Bond & Share Co. are the acts of these operating companies, the former is engaged in interstate commerce to the extent that the operating companies are so engaged."

In consideration of what has heretofore been said, I am of opinion that there is no need to go to the lengths asked by the Commission.

By virtue of the control which respondent exercised over the subsidiary operating companies, it had a direct effect upon all their busi-

ness, including that in interstate commerce. The power of the National Government over interstate commerce has been held to extend not only to activities which may be formally denominated subjects of interstate commerce, but to acts which in fact affect that commerce. See *Di Santo v. Com. of Pennsylvania*, supra. Compare also the following cases: *Western Union Telegraph Co. v. State of Kansas*, 216 U. S. 1, where a State tax upon the privilege of doing local business was held unconstitutional because its effect was to burden interstate commerce; *The Daniel Ball*, 10 Wall (77 U. S.) 557, where the Federal license and inspection laws were held applicable to a vessel engaged in transportation entirely within one State, because the vessel carried goods bound for another State; *Southern Railway Co. v. United States*, 222 U. S. 20, where the Federal Safety Appliance Acts were held applicable to cars moving in intrastate traffic and not connected with any cars used in interstate commerce, on the ground that such regulation promoted the safety of those engaged in interstate commerce; *Southern Pacific Company v. Industrial Accident Commission*, 251 U. S. 259, where a lineman wiping insulators supporting a main wire conducting electricity which, flowing from it through a transformer, and thence along the trolley wires of a railroad, moved cars in both interstate and intrastate commerce, was held employed in interstate commerce, within the Federal Employers' Liability Act.

It follows that the commerce power, in the exercise of which Congress enacted the Federal Trade Commission Act, is indubitably broad enough to comprehend the acts of respondent which have been shown to affect interstate commerce, and, in the light of the foregoing decisions, it would seem clear that respondent is "engaged in commerce" within the meaning of that act.

The manner in which the affairs of the operating companies having to do with interstate commerce are affected by Electric Bond & Share Co. as well as its own activities in the purchase and shipment of materials and equipment in interstate commerce, are quite sufficient to bring respondent within the investigatory authority of the Federal Trade Commission.

Accordingly, an order will be entered directing the individual respondents to answer all questions relating to the cost to Electric Bond & Share Co. of such services as it renders the operating companies in return for the payment of a fee based upon their gross earnings; to the cost of rendering purchasing services which result in interstate movements of materials, apparatus, and supplies to or from any of its subsidiaries, for which a separate fee is charged; and to the cost of rendering any services to subsidiary companies engaged in the interstate transmission of electricity or gas, for which a separate fee is charged.

R. F. KEPPEL & BRO., INC., v. FEDERAL TRADE  
COMMISSION<sup>1</sup>

No. 4835

(Circuit Court of Appeals, Third Circuit. January 25, 1933)

COMMERCE KEY-NO. 48.

Congress may regulate interstate commerce by means designed to promote public welfare.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Not all practices opposed to good morals or public policy amount to "unfair methods of competition" within statute (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (2).

Manufacturer distributing candy under sales plan, whereby prizes were given with some of pieces, *held* not engaged in "unfair methods of competition" within regulatory power of Federal Trade Commission (Fed[82]eral Trade Commission Act sec. 5; 15 USCA sec. 45).

(The syllabus is taken from 63 F. (2d) 81)

Petition to review order of Commission. Order reversed.

*Mohun & Elliott*, of Washington, D.C. (*George E. Elliott*, of Washington, D.C., and *John A. Coyle*, of Lancaster, Pa., of counsel), for appellant.

*Robert E. Healy*, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, *Henry C. Lank*, and *G. Edwin Rowland*, all of Washington, D.C., for appellee.

Before WOOLLEY, DAVIS, and THOMPSON, Circuit Judges, WOOLLEY, J., dissenting.

THOMPSON, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission requiring the petitioner to desist from certain of its trade practices. The petitioner manufactures, sells, and distributes in interstate commerce certain packages or assortments of candy. Each assortment is accompanied by a display card designed to be used by the retailer. One assortment known as "Chocolate Penny Man 120's" is composed of 120 chocolate covered candies, identical in appearance, 4 of which conceal pennies placed there by the petitioner at the time it manufactures and packs the assortment. The purchaser pays 1 cent for the individual pieces of candy. Four of the 120 purchasers regain their money by obtaining the pieces which contain the pennies. Another assortment bears the name "1, 2, 3 Big Chief

<sup>1</sup> Reported in 63 F. (2d) 81. Judgment of lower court affirmed by Supreme Court on Feb. 5, 1934, 291 U.S. 304, 54 Sup. Ct. 423. For case before Commission, see 15 F.T.C. 276.

60's" and consists of peanut bars wrapped in paper. Enclosed in the wrapper is a ticket showing the retail price to be paid by the purchaser. This may be 1, 2, or 3 cents. It cannot be known, until the candy is unwrapped, what price the purchaser must pay for the particular piece. The third assortment "School Days 200's" consists of 200 chocolate covered creams of a uniform size and shape, which retail at 1 cent each. Of these the centers of 8 are pink, 4 are chocolate, and the remainder are white. Packed with the creams are 8 pieces of chocolate candy representing a boy or girl, and 4 double pieces representing twins. The package contains, in addition, a "school companion". For a cream with a pink center, the purchaser receives the chocolate boy or girl; for a chocolate center, the twins; and for the last piece in the box, the "school companion". This is a fairly complete outline of the three sales plans in use by the petitioner.

The Federal Trade Commission filed a complaint in which it charged the petitioner with selling and distributing its candy by means of a sales plan or method which constitutes a lottery. Testimony was taken and the Commission concluded that the sales plans which we have described are, in effect, games of chance, that they are against public policy, and that they constitute unfair competition in commerce. The Commission ordered the petitioner to cease and desist from the use of such practices.

Congress has exclusive control over the regulation of commerce among the States. The manner in which it exercises this constitutional power is not limited. It may regulate commerce by means designed to promote the public welfare and in matters which are ordinarily within the police powers of the States. *Lottery Case*, 188 U.S. 321; *Hoke v. United States*, 227 U.S. 308; *Caminetti v. United States*, 242 U.S. 470. Congress, therefore, had power, had it seen fit, to prohibit business methods such as are practiced by the petitioner. The contention of the respondent is that Congress has done so in section 5 of the Federal Trade Commission Act (15 USCA sec. 45), which provides:

Unfair methods of competition in commerce are declared unlawful.

*Power to prohibit.*—The commission is 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.

The act contains no definition of the words "unfair methods of competition in commerce" and their meaning must therefore be arrived at through a reasonable construction of the language used.

In a recent case in the Second Circuit (*Northam Warren Corporation v. Federal Trade Commission*, 59 F. (2d) 196, 198) complaint was made to the Federal Trade Commission by a trade competitor

that the respondent was using testimonials for advertising purposes for which it had paid, and that that fact was not disclosed to its cus[83]tomers. The Commission, holding that this was an unfair method of competition in commerce issued a "cease and desist" order, from which the respondent appealed. Although the acts of the respondent may have been unethical and deceptive in that the purchasing public was not informed that the judgment of those giving the testimonials may have been influenced by a money consideration, we are in accord with the reasoning of the court in reversing the order of the Federal Trade Commission. We quote from Judge Manton's opinion:

The Federal Trade Commission Act (15 USCA 41-51), does not purport to establish a decalogue of good business manners or morals. Its purpose is to strike down at their inception practices which are unfair and which, if permitted to run their full course, would result in the creation of a monopoly and an undue restraint of trade. Even if a practice may be regarded as unethical, it would still be beyond the purview of the act if it lacks the public interest necessary to support the Commission's jurisdiction. *Federal Trade Comm. v. Klesner*, 280 U.S. 19, 50 S.Ct. 1, 74 L. Ed. 138, 68 A. L. R. 838. The Commission does not suggest that these testimonials tend to create a monopoly; they do not have a tendency to create an undue restraint of trade. The strongest argument the respondent makes is that failure to state the price paid for the testimonial amounts to deception and misrepresentation concerning the petitioner's product and in that way the petitioner is able to deprive honest manufacturers of a market. *Federal Trade Comm. v. Winsted Hosiery Co.*, 258 U.S. 483, 42 S.Ct. 384, 66 L. Ed. 729. But where unlawful restraint of trade has been ordered to be discontinued it has always appeared that there was some dishonesty in labeling or marketing the goods. *Federal Trade Comm. v. Winsted Hosiery Co.*, supra; *Guarantee Veterinary Co. v. Federal Trade Comm.*, 285 Fed. 853 (C.C.A. 2); *Royal Baking Powder Co. v. Federal Trade Comm.*, 281 Fed. 744 (C.C.A. 2); *Proctor & Gamble v. Federal Trade Comm.*, 11 F. (2d) 47 (C.C.A. 6). In order that the Commission proceed in the public interest, the courts have insisted not only upon a showing that the practice is unfair and disapproved, but also that the public are misled thereby. *Federal Trade Comm. v. Klesner*, supra.

Practices which tend to hinder competition or create monopoly are against public policy just as practices which are characterized by deception, bad faith, fraud, or oppression are against good morals, but not all practices which are opposed to good morals or public policy amount to unfair methods of competition within the meaning of the Federal Trade Commission Act (45 USCA sec. 41 et seq.). *Federal Trade Comm. v. Gratz*, 253 U.S. 421; *Federal Trade Comm. v. Raladam*, 283 U.S. 643.

The petitioner did nothing against public policy, within the restricted sense of the term, because its acts did not, of themselves, tend to hinder competition nor create monopoly. Whatever they did, their competitors could do. Other candy manufacturers were free to use the same sales methods as those of the petitioner and to ob-

tain their share of the penny candy trade on an equal footing with the petitioner. The testimony shows that a decided majority of candy manufacturers did in fact use similar methods. There is nothing in the petitioner's practices tending to hinder competition or create monopoly.

The answer to the contention that the petitioner's practice constitute a breach of good morals, and, in that respect, unfair methods of competition, is that there is nothing in the case to show deception, fraud, or bad faith, affecting its competitors or the ultimate consumer. Display cards sent by the petitioner to accompany the merchandise contain a complete, fair, and accurate description of the sales plans. The consumer receives a piece of candy for his cent and, although he knows that the quantity is relatively less than if no prize were given, he is satisfied to deprive himself of the difference in bulk in exchange for his opportunity to obtain a prize.

We conclude that, upon a reasonable construction of the Federal Trade Commission Act, the Commission was without jurisdiction to make the "cease and desist" order brought here for review.

The order of the Commission is reversed.

*WOOLLEY, Circuit Judge, dissenting.*

I am constrained to dissent from the judgment of the court because of what I conceive to be a false strain that has run through the case from the beginning.

In little candy shops close to public schools, whose customers are small children and whose sales are of candy in small quantities at low prices, there has grown up a trade in "Break and Take" packages, described in the court's opinion. In all of these packages there is a single piece of candy; in a small number there is in addition money, a prize, or ticket giving a right [84] to a prize or to a price advantage. Thus the child, not knowing the contents of a package, buys with its penny two things, candy and a chance of getting something else. Packages containing prizes and those not containing prizes are so arranged in number that the child loses in nearly every purchase. To be definite, in one plan it wins on an average of one time out of thirty. This business, based on the instinct to gamble—as natural in children as in adults—has grown amazingly, and with undesirable results, personal and commercial.

In proceedings before the Federal Trade Commission, that tribunal issued an order against R. F. Keppel & Bro., Inc., to cease and desist from the practice on several findings of which one was that it constituted an unfair method of competition in commerce; another that it amounted to a lottery and, accordingly, was against the public policy of the United States and of many States.

Unfortunately the Commission at the hearing and in its findings stressed gambling as against good morals and public policy and, again unfortunately, the argument in this court on the candymaker's petition for review, following the over-emphasis of the Commission, was directed to that phase of the matter as though it were an issue in the case—and the main issue. Still unfortunately, as I view it, the action of the Commission and the trend of the argument in that regard entered into and, in a different way, influenced the decision of the court when, as I look at the case, the decision has nothing to do with morals, business ethics, or public policy, but turns solely on questions, under the statute, of the Commission's jurisdiction in a matter of "public interest" and on the presence of evidence to support the Commission's finding of "unfair competition."

In order briefly to state my views I shall meet the four propositions presented by the petitioner as it has framed them:

D. The Federal Trade Commission has no jurisdiction to enforce the anti-lottery statutes of the United States and of the several States.

That is right.

C. The petitioner's candy assortments were not articles of interstate commerce at the time of the employment of sales' methods in question.

This proposition is based on the fact that the ultimate sales to the public are made by local retail dealers, and on the thought that the petitioner can, within the four walls of its factory, so dress and pack its candies that their sale to the public will involve an unlawful practice, and can, without further concern, sell them either directly to retailers or to wholesalers and jobbers in different states who, in turn, sell them to retailers. Then, when the retailers resell the candies to the public in the way the petitioner has made possible and has intended, the commerce is intrastate, not interstate, and the petitioner is in no sense responsible for its part in the transactions.

That is wrong.

B. The record completely fails to show a substantial and specific public interest.

Distinguished from matters of public policy, the Commission's jurisdiction concerns matters of public interest. If the methods of sale be unfair to the purchasing children, they are unfair to a part of the public, indeed to the whole of the public which purchases candy in small quantities at penny prices. If the methods of sale be unfair to competitors in the manufacture and sale of candies in the same trade, they are unfair to another part of the public. Stated crudely, there are in this case two publics, each with a different yet specific and substantial interest. To stay a wrong inflicted upon

either by unfair methods of competition is clearly within the jurisdiction of the Federal Trade Commission.

A. There is an entire absence (of evidence) of unfair methods of competition as that term is used in the Federal Trade Commission Act.

This, I think, is the heart of the case, and aside from the question of "public interest" is the only question in the case. I shall briefly discuss it, first from the standpoint of candy purchasers, and then from the standpoint of candy competitors; the two classes of the public interested and affected.

Passing by all aspects of the sale methods in question which bear upon private morals, business ethics, and public policy, I shall inquire coldly into the trade or money side of the transactions. For illustration, take the "Chocolate Penny Men 120's" which are sold from a box containing 120 packages. Four have candy and a penny enclosed; 116 have candy alone. Or take the "1, 2, 3 Big Chief 60's" which are sold from a box containing 60 packages; 10 retailing for 1 cent each, 10 for 2 cents and 40 for 3 cents. The price is not known until the package is selected and on being broken open is revealed as 1, 2, or 3 cents by a ticket enclosed. When the child makes a blind purchase of any of these candies, it pays for two things; first for the candy, and next for a chance, [85] that is, as the child believes, a chance of getting something for nothing. The petitioning manufacturer, however, takes no chance; it makes certain that it is paid for this "something" by shortening the quantity or lowering the quality of the candy in the blank package, which makes up for the penny pieces in one scheme and the lower prices in the other. In this way the child, getting less candy or inferior candy, pays more for candy in break and take packages than for candy in competing straight packages at the same prices. In other words, the child, paying its penny, does not get a penny's worth. In this, I think, it is unfairly dealt with. It is no answer to say that the child should discriminate and buy straight goods, for, as presently will appear, the break and take packages have in most cases driven penny straight candies off the shelves of the shops. So the child must buy what is before it and, in doing so, is unquestionably deceived, or must go without, which with a penny in its pocket it is not likely to do.

Competition in commerce is a contest for trade. It is a fight; sometimes bitter, sometimes fatal. It is not unlawful merely because it is hard to meet or because, failing to meet it, one may be driven out of business. It is only unlawful when unfair. What constitutes unfairness varies with each case. An apposite illustration is the old trading stamp system whose conception and results were similar to those in the break and take packages of the petitioner. It, too, involved the delusion of getting something for



nothing and has been regarded unfair and declared unlawful by the statutes of many states. There, also, two classes were affected—the purchasing public and the competing public.

Differing in a way that makes the trading stamp system look almost commendable, the petitioning candymaker in this case not only entered into competition for the penny-candy trade with smaller candy units, but, stepping outside of commerce, injected into its competition a gamble which has made its competitors contest with it not only for the purchasing trade but for the speculating public. To sell their goods, its competitors have to compete with the petitioner not only in wares and prices but by devising and putting into practice more seductive gambling schemes. This, I think, is not commerce; it is merchandising chance instead of candy. Aside from any question of morals, I regard it unfair. This view is not an abstract conception but is based on the results of the petitioner's competitive practice shown by the evidence to be as follows:

It developed that when penny and nickel "chance candies" are on sale with "straight goods", children almost universally select those involving a gamble. The result is that "straight goods" rarely sell over the same counter with "chance candies." So established is this observation that many keepers of small stores have ceased to buy and display "straight goods" for the penny trade. They sell only "chance candies." In consequence more than half of the manufacturers of penny candies in this country have gone into the trick trade. Many traveling salesmen for "straight goods" houses have complained of their inability to sell their wares in competition with "chance candies." Others have refused further to continue the effort and have threatened to seek employment elsewhere. One "straight goods" concern attributes to competition by "chance candies" a drop in its business of 50 percent in the sale of penny goods and 20 percent in the sale of nickel goods. Another concern manufacturing only "straight goods" lost some of its strong customers because, wanting "chance candies" as well, they preferred to buy both kinds at one place. Still another manufacturer who stuck to "straight goods" saw his business reduced 85 percent by reason of this new type of competition. Two other manufacturers, "competing for the child's penny", declared that their refusal thus far to put a gamble in their candy packages has placed them at a distinct disadvantage. Another concern was "forced" to meet the petitioner's competition by putting out trick candy packages. It then discontinued the practice but later was forced to resume it, mainly because of "a howl set up by our salesmen that they could not get the business". Again it stopped the practice and again it was forced to resume it in order not only to regain business in "chance candies" but to retain its business in "straight goods" as customers who still deal in candies of both kinds

want to buy from one manufacturer or jobber. When it stopped selling "chance candies" its business fell off from 40 to 50 percent. When it started again, its business increased at once. Officers and salesmen of other companies testified to similar experiences, which apparently extend through the trade.

And, finally, there is evidence that candies in break and take packages are smaller in size, lighter in weight, and inferior in quality, proving rather conclusively that children are imposed upon and that in competition with "straight goods" at the same prices the "chance" is the thing that makes the sales.

[86] I am of opinion this evidence supports the Commission's finding of unfair competition and that that finding alone is enough to make valid the Commission's order. I think it should be sustained.

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## ARROW-HART & HEGEMAN ELECTRIC CO. v. FEDERAL TRADE COMMISSION<sup>1</sup>

No. 183

(Circuit Court of Appeals, Second Circuit. January 30, 1933)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

In proceeding to review Trade Commission's order, trial examiner's report and exceptions thereto should not be included in record (Clayton Act, sec. 11, 15 USCA sec. 21; Federal Trade Commission Act secs. 2, 6 (g), 15 USCA secs. 42, 46 (g); Circuit Court of Appeals Rule 13, par. 4, and Rule 21, pars. 2, 3).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Statutory authority of trial examiners to administer oaths and affirmations, examine witnesses, and receive evidence in proceedings before Trade Commission is not exclusive, but discretionary (Federal Trade Commission Act sec. 9; 15 USCA sec. 49).

(The syllabus is taken from 63 F. (2d) 108)

Petition by Arrow-Hart & Hegeman Electric Co. to review order of Commission. On petitioner's motion for order directing respondent to amplify record and on respondent's motion to strike out part of record. Petitioner's motion denied, and respondent's motion granted.

[109] *Charles Neave*, of New York City, and *Arthur L. Shipman*, *Charles Welles Gross*, and *Wallace W. Brown*, all of Hartford, Conn., for petitioner.

*Robert E. Healy*, of Washington, D.C., chief counsel for Federal Trade Commission.

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges.

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<sup>1</sup> Reported in 63 F. (2d) 108. For decision on the merits, see *supra*, at p. 683.

## PER CURIAM:

The respondent moves for an order striking from the petition the paragraphs thereof consisting of reference to and quotations from the trial examiner's report upon the facts. The petitioner moves that the respondent be ordered to certify to the court the trial examiner's report upon the facts with the petitioner's exception thereto, alleging that this is necessary to complete the record. The respondent has not certified to this court as part of the transcript of the record, the trial examiner's report upon the facts or the petitioner's exceptions thereto, claiming that it is not properly part of the transcript under section 11 of the Clayton Act (38 Stat. 734, 15 USCA sec. 21).

Paragraphs 2 and 3 of rule 21 of this court make reference to the filing of records by the Federal Trade Commission and do not require the reports of the trial examiners or exceptions filed thereto to be printed. Nor does paragraph 4, rule 13 of this court so require. That section refers only to appeals and records from district courts and has no reference to certification of transcripts from the Federal Trade Commission. Such records are covered exclusively by rule 21. The Commission's report referred to in the Clayton Act (38 Stat. 734) is its order, the testimony and the pleadings. They are to be certified to this court when a review is sought by a petition for enforcement or a petition for review. But the statute contains no requirements that the trial examiner's report or the exceptions thereto be a part thereof. Such report seems to be prescribed by the rules of practice adopted by the Commission under the general statutory power. Federal Trade Commission Act (38 Stat. 721, sec. 6 (g), 15 USCA sec. 46 (g)). These reports are for the assistance of the Commission and are kept in the files of the Commission for reference. The review and the findings thereon, the statute provides, are for the Commission and not the trial examiners. The reports of the trial examiners are not binding upon one charged with violation of the act. Indeed, the act does not require the Commission to employ examiners to proceed with hearings or to make reports; it authorizes the Commission to employ examiners among other officers. (38 Stat. 718, sec. 2, 15 USCA sec. 42.) The statute authorizes such examiners to administer oaths and affirmations, examine witnesses and receive evidence. (38 Stat. 722, sec. 9, 15 USCA sec. 49 (and notes) p. 283.) This is not exclusive authority, but discretionary. We assume that the examiner's reports are used as of some assistance to the Commission, but the result or conclusions of the Commission, we must assume, are found in the findings adopted by it.

In the instant case, when the trial examiner's report on the facts was served upon counsel for the petitioner, it was accompanied by a letter signed by the trial examiner calling attention of counsel "to

the fact that the enclosed report upon the facts represents only the views of the trial examiner and is not a decision of the Commission. The Commission's final action on the case will be had only after due consideration of the entire record, including exceptions, briefs and arguments."

It appears to have been the practice to omit such trial examiners' report from the records in proceedings before the Circuit Court of Appeals. See *J. W. Kobi Co. v. Federal Trade Commission* (No. 9614 Oct. Term 1926 C.C.A. 2)<sup>1</sup> where this court denied the petitioner's motion for an order requiring the Commission to certify to the court the report of the trial examiner and the exceptions thereto. See *J. W. Kobi Co. v. Federal Trade Commission* (C.C.A.), 23 F. (2d) 41. The First Circuit followed the practice in *John Moir et al. v. Federal Trade Commission* on October 14, 1925,<sup>1</sup> by striking out the trial examiner's report and the petitioner's exceptions. See *John Moir et al. v. Federal Trade Commission* (C.C.A.) 12 F. (2d) 22. The Seventh Circuit, on December 3, 1928, in *Breakstone v. Federal Trade Commission*,<sup>1</sup> for special reasons there assigned, declined to strike out the trial examiner's report and the exceptions thereto. In the instant case, the Commissions' findings of fact make no reference directly or indirectly to the trial examiner's report. The Ninth Circuit, on March 7, 1932, granted a motion to strike out a requirement in an order that the Commission certify the report of the trial examiner and held that the Commission should not be required so to certify the report of the examiner unless the report and exceptions are referred to in the findings of the Commission [110] and thereby adopted by it as its findings. *Algoma Lumber Co. v. Federal Trade Commission*, 56 F. (2d) 774.

The motion of the respondent will be granted and the motion of the petitioner denied.

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### E. GRIFFITHS HUGHES, INC., v. FEDERAL TRADE COMMISSION <sup>2</sup>

No. 5636

(Court of Appeals of the District of Columbia. Argued January 10-11, 1933. Decided January 30, 1933)

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

Statute imposes on Federal Trade Commission duty of public hearings on complaint of unfair methods of competition (Federal Trade Commission Act and sec. 5 thereof; 15 USCA sec. 41 et seq., and sec. 45).

<sup>1</sup> No opinion filed.

<sup>2</sup> Reported in 63 F. (2d) 302. For cease and desist order see 18 F.T.C. 1.

Provision of the Federal Trade Commission Act (15 USCA sec. 41 et seq.) that any person who may be interested in the question may make application and may, on good cause shown, be allowed by the Commission to intervene and appear in person or by counsel, was properly construed by the Commission as requiring public hearings, as against contention that Commission has no right to determine to hear evidence in public, and that until its final determination its function is wholly inquisitorial, and therefore necessarily secret.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

Regulation adopted by Federal Trade Commission under statutory authority has force of law, particularly in case of regulation of long standing (Federal Trade Commission Act; 15 USCA sec. 41 et seq.).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

In absence of fraud or arbitrary abuse of power, finding of Federal Trade Commission that complaint against corporation charged with using unfair methods of competition was issued in public interest is conclusive (Federal Trade Commission Act; 15 USCA sec. 41 et seq.).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

Object of Federal Trade Commission Act is to prevent public deception and preserve free competition (Federal Trade Commission Act; 15 USCA sec. 41 et seq.).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

Hearings on complaint issued by Federal Trade Commission charging false advertising of preparations manufactured, resulting in deceiving public and prejudicing competitors, *held* properly public (Federal Trade Commission Act and sec. 5 thereof; 15 USCA sec. 41 et seq. and sec. 45).

The hearings on the complaint were properly held in public, since no charge was made in bill seeking to enjoin the public hearings that Commission was acting unfairly or arbitrarily or that result of open hearing would be to disclose trade secrets or names of plaintiff's customers or any other detail of its business which, without regard to final determination of the controversy, would result in serious injury to it.

(The syllabus is taken from 63 F. (2d) 362)

Suit by E. Griffiths Hughes, Inc., against Commission. From decree dismissing bill, plaintiff appeals. Affirmed.

*Albert E. Maves*, of New York City, and *Elwood H. Seal*, of Washington, D.C., for appellant.

*Robert E. Healy*, *Martin A. Morrison*, and *Harry D. Michael*, all of Washington, D.C., for appellee.

Before MARTIN, Chief Justice, and ROBB, VAN ORSDER, HITZ, and GRONER, Associate Justices.

GRONER, Associate Justice:

This appeal challenges the right of the Federal Trade Commission to take testimony in an open or public session in a hearing on a complaint directed against the appellant charging it with false and fraudulent advertising and unfair trade methods in interstate commerce.

The act of Congress creating the Federal Trade Commission and defining its powers and duties (act Sept. 26, 1914; USCA, title 15, sec. 41, et seq.) provides for the issuance of a "complaint" against any person, partnership, or corporation (except banks and common carriers) using unfair methods of competition in commerce. The test is the public interest. The law provides for a hearing, the taking of testimony, and the filing of the same in the office of the commission.

In the instant case the complaint issued and was duly served on appellant and an answer thereto was duly filed. On the day set for the hearing appellant applied to the Su[363]preme Court of the District of Columbia for an injunction restraining the commission from making the complaint public and from taking any testimony in public and from making public the transcript of the testimony. The lower court dismissed the bill and the matter is here on appeal. We think the action of the lower court was in all respects correct.

A copy of the complaint issued by the commission was filed as an exhibit in the proceedings below, and by recourse to it we ascertain that it recited in the first place that it was issued in the public interest, that it charged appellant was engaged in the sale in interstate commerce of certain proprietary preparations known as Kruschen Salts and Radox Bath Salts; that the former of these preparations was advertised by appellant as a cure or remedy for obesity and that the latter as a preparation relieving pain and having medicinal and therapeutic value and that it is imported from England and combines the properties of the world-famous medical spas. The complaint then went on to state that all of this advertising was untrue because in fact the Kruschen Salts is no more than a purgative or laxative and therefore not a cure or remedy for obesity, and that the Radox Salts has no material medicinal or therapeutic value and is not imported from England and does not combine the properties of the European medical spas; and it concludes that as a result of these misrepresentations the public is misled and deceived and appellant's competitors prejudiced within the intent and meaning of section 5 of the act (15 USCA sec. 45).

The bill filed in the lower court charges as the ground of injunctive relief that, because of the announcements in trade journals of the issuance by the commission of its complaint, appellant's business has been injured and that the taking of testimony in public will aggravate and increase the injury, for all of which appellant has no adequate or complete remedy at law.

It will be at once noticed that there is no charge in the bill that the commission is acting unfairly or arbitrarily or that the result of an open hearing will be to disclose trade secrets or the names of appellant's customers, or any other detail of its business which, with-

out regard to the final determination of the controversy, will result in serious injury to it. On the contrary it is confined to the assertion that the commission has no right to determine to hear evidence in public; that until its final determination its function is wholly inquisitorial and is therefore necessarily secret.

We find nothing in the act which will warrant this limitation on the commission's powers, or indeed anything which would indicate that this was the intention of Congress. The act distinctly provides that *any* person who may be interested in the question may make application and may, upon good cause shown, be allowed by the commission to intervene and appear in person or by counsel. This provision the commission has construed to impose upon it the duty of public hearings, and in this we concur.

More than 12 years ago the commission adopted a rule that all hearings before it, or its examiners, on formal complaint should be public hearings, and another rule of later date that after complaint issued the papers in the case shall be open to the public for inspection under such rules and regulations as the secretary of the commission may prescribe. Both rules are in line with the theory that a competitor has the right to intervene, and this in itself is inconsistent with the idea of secrecy. But without regard to this, the commission is authorized by the act to adopt such rules not inconsistent with law as may be necessary in carrying out the act; and we have uniformly held that a regulation adopted under these circumstances has the force of law, and much more is this true where the rule is one of long standing. In a number of other acts of Congress creating bodies similar to the Trade Commission, provision is made that all proceedings *shall* be public. This is true in the case of the Interstate Commerce Commission and the Board of Tax Appeals and in proceedings before the deputy commissioner under the Longshoremen's and Harbor Workers' Compensation Act (33 USCA sec. 901 et seq.); and it is argued on behalf of appellant that, because of these specific provisions and the omission of such in the act creating the Federal Trade Commission, Congress meant that proceedings before the latter body should be secret rather than public, but we think this view cannot be sustained. Doubtless Congress considered that there might be occasions when it would be unjust to a person or corporation proceeded against to require public hearings and left the decision in such cases to the board. Certainly the omission can be given no greater significance.

Nor is it suggested in the bill for injunction that the proceeding is one not in the public interest, and it could not well be because except in the case of fraud or arbitra[364]ry abuse of power, that question is foreclosed by the finding of the commission. We have said before that one who engages in interstate commerce does so sub-

ject to the regulatory power of Congress. The test is whether the restrictive measures which Congress may adopt are reasonably adapted to secure the purposes and objects of regulation. To strike down unfair methods of competition or unfair practices on the public is the duty imposed on the commission by Congress. The object of the act is to prevent public deception and to preserve free competition. To accomplish this, of course, Congress may not authorize the spoliation of private right by public authority, but there is no charge of this nature here, and such a charge could be much more readily made and sustained if the act had provided for secret or star-chamber proceedings. The rule of the board is therefore wholly consonant with the modern view of functions of government. The purpose underlying the constitutional guaranty of public trial in prosecutions for crime is to prevent abuses arising out of the avarice of unprincipled officials or the sale of justice or a conviction through illegal evidence. The rule requiring public hearings, whether in courts or bureaus, avoids these possibilities, and is to be approved. Doubtless on such a hearing as is here provided the commission has discretion, on a showing that such a hearing would disclose trade secrets or other data in itself destructive of the business under investigation, to do whatever is proper and necessary to avoid these consequences, but where, as is here alleged, the possibility of loss is founded wholly on the public knowledge that an investigation has been ordered, no good reason exists or can be shown why the public hearing should not continue.

Affirmed.

FEDERAL TRADE COMMISSION *v.* ROYAL MILLING CO.  
ET AL.<sup>1</sup>

No. 393

(Argued January 20, 1933. Decided February 6, 1933)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

To sustain Federal Trade Commission's orders to cease certain practices, they must be unfair methods of competition in interstate commerce and commission's proceeding must be in public interest (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 71.

Sale of flour under names falsely importing or false representations that sellers manufactured flour *held* unfair methods of competition within Federal Trade Commission Act.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Public interest must be specific and substantial to justify proceeding by Federal Trade Commission to prevent unfair competition; mere misrepresentations and confusion or deception of purchasers being insufficient.

<sup>1</sup> 288 U.S. 212, 53 Sup. Ct. Rep. 335.



## TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Purchasing public's interest in protection from deception into purchasing flour from others than original grinders of grain *held* specific and substantial, so as to justify proceeding by Federal Trade Commission to prevent such sales.

## TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission's order to cease selling flour under long-used trade-names falsely importing that sellers manufactured flour *held* improper; it being sufficient to require use of proper qualifying words.

## TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission's orders to cease unfair competition should go no further than reasonably necessary to correct evil and preserve rights of competitors and public.

## TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission in first instance should determine whether unfair competition can be prevented without suppressing long-used trade-names by requiring proper qualifying words.

(The syllabus is taken from 53 Sup. Ct. Rep. 335)

On writ of certiorari to Circuit Court of Appeals for Sixth Circuit, to review judgment setting aside Commission orders requiring respondents to cease carrying on sale of flour in interstate commerce under names falsely importing and false representations that they manufactured flour.<sup>2</sup>

Reversed and remanded, Mr. Justice McReynolds and Mr. Justice Roberts, dissenting.

*The Attorney General* and *Mr. John Lord O'Brian*, Assistant Attorney General, for petitioner.

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

[213] Mr. Justice SUTHERLAND delivered the opinion of the Court.<sup>3</sup>

This writ brings here for consideration six orders made by the Federal Trade Commission under section 5 of the Federal Trade Commission Act (c. 311, 38 Stat. 717, 719, Title 15, U.S.C., sec. 45), which declares that unfair methods of competition in interstate commerce are unlawful. Proceeding under the act<sup>4</sup> the commis-

<sup>2</sup> See 58 F. (2d) 581, and, for cases before commission, 15 F.T.C. 38.

<sup>3</sup> The opinion was announced by the Chief Justice, Mr. Justice Sutherland being absent from the Bench.

<sup>4</sup> "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 thirty days after the service of 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 methods of competition.

"The findings of the commission as to the facts, if supported by testimony, shall be conclusive."

sion filed separate com[214]plaints against respondents, each of whom operates a business, either as a corporation, partnership or an individual, in the city of Nashville, Tenn. All are engaged in preparing for the market self-rising flour and plain flour and selling the same in interstate commerce. None of them grind from the wheat the flour which they thus prepare and sell, but only mix and blend the different kinds of flour purchased from others engaged in grinding. After being mixed and sifted, the flour, either plain or made self-rising, is packed into bags for the market. Most of the concerns grinding wheat into flour and selling in the same market also make self-rising flour and blended plain flour, ground from different sorts of wheat.

One of the respondents does business under the names, Royal Milling Company, Richland Milling Company, and Empire Milling Company. The others use trade names of similar import, all containing the words "milling company", or "mill", or "manufacturer of flour"—words which are commonly understood by dealers and the purchasing public to indicate concerns which grind wheat into flour.

There are other concerns engaged in the business of producing plain and self-rising flour, by a process of mixing and blending, and selling the product in the same market in competition with respondents and with the grinders; but these do not name themselves millers, mills, [215] or milling companies, or hold themselves out in any way as grinders of grain. The business involved is large and the competition among the several concerns substantial; and the use of the enumerated trade names by the respondents tends to divert and does divert business from both the grinders and those blenders who do not use such trade names or an equivalent therefor. Respondents have circulated written and printed circulars among the trade which either directly assert, or are calculated to convey the impression, that their product is composed of flour manufactured by themselves from the wheat. These statements and the use of the trade names under which respondents do business have induced many consumers and dealers to believe that respondents are engaged in grinding from the wheat the product which they put out. The respondents, early in the proceeding before the commission, offered "to place on their letterheads, bags, invoices, etc., in conspicuous lettering the words: 'Not Grinders of Wheat.'" This offer the commission evidently thought it unnecessary to consider, in view of the more comprehensive conclusion which it reached as to the remedy.

The findings of the commission, supported by evidence, in substance embody the foregoing facts, and much else which for present purposes it is unnecessary to repeat. From these findings the commission concluded that the practices of respondents were to the prejudice

of their competitors and of the public and constituted unfair methods of competition within the meaning of section 5 of the Federal Trade Commission Act. Thereupon, the commission issued its orders against respondents to cease and desist from carrying on the business of selling flour in interstate commerce under a trade name or any other name which included the words "milling company", or words of like import, and from making representations, designed to effect interstate commerce, that they or either of them [216] manufacture flour or that the flour sold by them comes direct from manufacturer to purchaser, etc.

Upon review the circuit court of appeals set aside all orders of the commission, upon the ground that the proceeding by the commission did not appear to be in the interest of the public. (58 F. (2d) 581.)

To sustain the orders of the commission, three requisites must exist: (1) that the methods used are unfair; (2) that they are methods of competition in interstate 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. *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 646-647. Upon the first two of these we need take no time, for clearly the methods used were unfair and were methods of competition. *Federal Trade Commission v. Winsted Co.*, 258 U.S. 483, 492-494; *Federal Trade Commission v. Raladam Co.*, *supra*, at pages 651-652.

We also are of opinion that it sufficiently appears that the proceeding was in the interest of the public. It is true, as this court held in *Federal Trade Commission v. Klesner*, 280 U.S. 19, that mere misrepresentation and confusion on the part of purchasers or even that they have been deceived is not enough. The public interest must be specific and substantial. In that case (p. 28) various ways in which the public interest may be thus involved were pointed out; but the list is not exclusive. If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article, or one equally as good, but having a different origin. Here the findings of the commission, supported by evidence, amply disclose that a large number of buyers, comprising consumers and dealers, believe that the price or quality or both are affected to their advantage by the fact [217] that the article is prepared by the original grinder of the grain. The result of respondents' acts is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin. We are of opinion that the purchasing public is entitled to be protected against that species of

deception, and that its interest in such protection is specific and substantial. *Federal Trade Commission v. Balme*, 23 F. (2d) 615, 620. Compare *Federal Trade Commission v. Winsted Co.*, *supra*; *Ohio Leather Co. v. Federal Trade Commission*, 45 F. (2d) 39, 41. There is nothing in the Klesner case to the contrary.

Although we sustain the commission in its findings and conclusions to the effect that the use of the trade names in question and the misstatements referred to constituted unfair methods of competition within the meaning of the act, and that its proceeding was in the interest of the public, we think under the circumstances the commission went too far in ordering what amounts to a suppression of the trade names. These names have been long in use, in one instance beginning as early as 1902. They constitute valuable business assets in the nature of good will, the destruction of which probably would be highly injurious and should not be ordered if less drastic means will accomplish the same result. The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public; and this can be done, in the respect under consideration, by requiring proper qualifying words to be used in immediate connection with the names. See *N. Fluegelman & Co. v. Federal Trade Commission*, 37 F. (2d) 59, 61; *Federal Trade Commission v. Cassoff*, 38 F. (2d) 790, 791; *Federal Trade Commission v. Good-Grape Co.*, 45 F. (2d) 70, 72. Compare *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U.S. 554, 559; *Warner & Co. v. Lilly & Co.*, [218] 265 U.S. 526, 532; *R. Guastavino Co. v. Comerma*, 184 Fed. 549; *Warshawsky & Co. v. A. Warshawsky Co.*, 257 Ill. App. 571, 584 et seq. This is a matter which the Commission has not considered but which, as the body having primary jurisdiction, it should, in the first instance, consider and determine. And in doing so it will be enough if each respondent be required by modified order to accompany each use of the name or names with an explicit representation that respondent is not a grinder of the grain from which the flour prepared and put out is made, such representation to be fixed as to form and manner by the commission, upon consideration of the present record and any further evidence which it may conclude to take. In respect of other particulars, the orders of the commission are sustained.

The decree below, therefore, will be reversed, and the proceeding remanded to the circuit court of appeals to be disposed of in conformity with this opinion.

*Decree reversed.*

Mr. Justice McReynolds and Mr. Justice Roberts are of opinion that the decree below should be affirmed.

ALGOMA LUMBER CO. ET AL. v. FEDERAL TRADE  
COMMISSION<sup>1</sup>

No. 6716

(Circuit Court of Appeals, Ninth Circuit. April 4, 1933)

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

To sustain orders of Federal Trade Commission, it must appear that methods used are unfair; that they are methods of competition in interstate commerce; and that proceeding by Commission to prevent use of methods 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.**

Use, by manufacturers, of expression "California White Pine" as applied to lumber from *pinus ponderosa* trees is "method of competition" within jurisdiction of Federal Trade Commission.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

While action taken by Bureau of Standards in stating standard commercial names for lumber was persuasive in case involving right of manufacturer to apply certain name to lumber, it was not controlling on Federal Trade Commission or court.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.**

Evidence held insufficient to support Federal Trade Commission's findings that manufacturers' use of commercial name "California White Pine", as applied to lumber from *pinus ponderosa* trees, was unfair method of competition or that its prevention would be in interests of public.

(The syllabus is taken from 64 F. (2d) 618)

Petition by Algoma Lumber Co. and others to review orders made by Commission. Orders annulled and set aside.

*Warren Olney, Jr., Allan P. Matthew, Carl I. Wheat, and McCutchen, Olney, Mannon & Greene*, all of San Francisco, Calif., for petitioners.

*Robert E. Healy*, chief counsel, *Martin A. Morrison*, assistant chief counsel, and *Eugene W. Burr*, all of Washington, D.C., for respondent.

*Edward S. Rogers* and *William T. Woodson*, both of Chicago, Ill., *amici curiae*.

Before WILBUR, Circuit Judge, and JAMES and NORCROSS, District Judges.

NORCROSS, *District Judge*:

The petition presents for consideration a review of orders made by the Federal Trade Commission on June 8, 1931, in the so-called

<sup>1</sup>Reported in 64 F. (2d) 618. See also 56 F. (2d) 774 (also reported in 15 F.T.C. 657) for ruling of court declining to require certification of trial examiner's report upon the facts, and, for cases concerned before the Commission, 15 F.T.C. 139, 166-168. Judgment of lower court reversed by Supreme Court on Jan. 8, 1934, 291 U.S. 67, 54 Sup. Ct. Rep. 315.

"White Pine Cases" requiring the petitioning lumber manufacturers to cease and desist from using the word "white" in conjunction with the word "pine" in connection with the sale in interstate commerce of lumber manufactured from the species of pine tree botanically known as *pinus ponderosa*.

Petitioners herein are twelve of a group of fifty manufacturers on the Pacific Coast, against which the Commission issued similar complaints on May 23, 1929. Each of these concerns was charged with the interstate sale of lumber under various terms, including the phrase, "white pine", with the alleged result of misleading and deceiving the trade and public to the injury of competitors and the public, and that the same is an "unfair method of competition forbidden by section 5 of the Federal Trade Commission Act" (15 US [619]CA sec. 45). The term employed by each of petitioners here is "California White Pine".

"To sustain the orders of the Commission three requisites must exist: (1) That the methods used are unfair; (2) that they are methods of competition in interstate 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." *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212 (decided February 6, 1933); *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 646-647. That the use of the expression "California White Pine" is a method of competition, there is no question. The only questions presented are whether requisites (1) and (3), found by the Commission to exist, are supported by the testimony. If so supported, the statute provides that such findings "shall be conclusive". *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, 491.

In *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, the Supreme Court said:

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, \* \* \*.

In *Federal Trade Commission v. Sinclair Refining Co.*, 261 U.S. 463, the Court said:

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. And to this end it is essential that those who adventure their time, skill and capital should have large freedom of action in the conduct of their own affairs.

This Court in *Hills Bros. v. Federal Trade Commission*, 9 F. (2d) 481, 484, said:

The court is only concerned with the question whether there is any competent testimony to support the findings of the Commission.

*Pinus ponderosa* belongs botanically with the so-called "yellow pine" group. The typical "yellow pine" is the longleaf pine of the South, a hard lumber useful where strength is needed, and classified botanically as *pinus palustris* and *pinus taeda*. When lumber from the *pinus ponderosa* trees came into local use in California it was given the name "California White Pine" in order to distinguish it from the hard "yellow pines" of the South. By 1886 it was so marketed in the States of California, Nevada, and Utah with occasional shipments further east. By about 1900 it was so marketed in the middle west sections, and about 1915 shipments extended to the Atlantic Coast.

The only species of true botanical "white pines" of commercial importance are Northern White Pine, and two Pacific Coast varieties—Idaho White Pine and Sugar Pine. The annual production of Northern White Pine in the United States is 825,000,000 feet B.M., of which 358,000,000 feet is from virgin timber in Minnesota, the remainder, 467,000,000 feet, being in the main second growth from the original forests stretching throughout the northern and eastern sections of the United States from Minnesota to the Atlantic Coast. The annual production of Idaho White Pine is 500,000,000 feet, and of Sugar Pine 280,000,000 feet. The annual production of Ponderosa is 2,800,000,000 feet, of which more than half has been sold since 1924 as "Pondosa Pine", and the remainder as "California White Pine", "Arizona White Pine", and "New Mexico White Pine".

Prior to 1924 the majority of Washington, Idaho, western Montana, and northern and central Oregon producers of Ponderosa were designating their lumber "Western White Pine". Upon application for complaints against them the Commission investigated this trade term. As a result of an agreement entered into by most of such producers in that year the name "Pondosa Pine" was adopted as a substitute. In the brief of counsel appearing as *amicus curiae* is the statement that following the said orders of the Commission of June 8, 1931, the name was again changed to "Ponderosa Pine".

Statistical Bulletin No. 21 of United States Department of Agriculture (Commission's Exhibit 34) gives a statement of the total timber stand in the United States for the year 1920 in board feet as follows:

*Pinus Ponderosa* ("California White Pine") and *Pinus Jeffreyi* (Jeffrey Pine) 249,578,000,000.

*Pinus strobus* ("Northern White Pine") and *Pinus resinosa* ("Norway Pine") 23,457,000,000.

*Pinus Monticola* ("Idaho White Pine") [620] and *Pinus lambertiana* ("Sugar Pine") 57,071,000,000.

From the foregoing it appears that the available supply of ponderosa and its kindred Jeffrey pine is about three times greater than the total available supply of the botanically true white pine timber in this country. The record also discloses an estimate of more than 15,000,000,000 board feet of Northern white pine (*Strobus*) within the Canadian provinces. At the rate of consumption given, not considering second growth, the present stand of timber will be practically exhausted within sixty years.

In Respondent's Exhibit No. 31—"U.S. Department of Commerce Bureau of Standards—Lumber—Simplified Practice Recommendation R 16-29" (issued December 5, 1929) there appears under the heading "Nomenclature of Commercial Softwoods" the statement:

The following standard commercial names for lumber cut from the principal species of softwoods shall be used in the formulation of lumber-grading rules and in the construction of contracts and the terms of purchase and sale of American Standard lumber. Preferred commercial names are shown in *italic*.

Here follows under subheadings of various names of trees such as cedars, firs, hemlocks, etc., the "Standard commercial name" of lumbers produced therefrom. Under the subheading "Pines" appear sixteen names, the following among others: "Arkansas soft pine", "California white pine", "Idaho white pine", "Longleaf pine", "North Carolina pine", "Northern white pine", "Norway pine", "Pondosa pine", "Southern pine", "Sugar pine". Placed opposite each such "Standard commercial name" is the proper botanical name or designation. Of the sixteen names, ten are of the botanical yellow pine. While commercially pine lumber falls within two main groups—the white and the yellow pines, it may be noted that the Bureau of Standards in the exhibit referred to makes no such groupings as it does in the case of "Douglas Fir" and "The true firs."

While action taken by the Bureau of Standards is persuasive in a case of this character, it is not necessarily controlling on the Federal Trade Commission or the courts. There may be cases in which the action of the bureau should be regarded as decisive. As said by the Circuit Court of Appeals, Seventh Circuit, in a recent case, *Kirk & Co., v. Federal Trade Commission*, 59 F. (2d) 179, 183:

We deem it quite pertinent and decisive of the question before us. The Government, through its agency, the Bureau of Standards, has thus committed itself to the proposition that castile soap may be made of oily and fatty ele-



ments other than olive oil. Being solely a question of fact we deem it expedient for other departments of the Government, including the judiciary, to accept such construction, if for no other reason than that of consistency.

It would not necessarily follow from this decision that a yellow pine might be sold as a white pine if such sales were unfair to the trade and injurious to the public, notwithstanding the Bureau of Standards had specified a name such as "California white pine" in a list of "Standard commercial names" for pine lumber. It would be different, however, if the particular lumber sold under such name possessed substantially the same qualities possessed by the white pines of commerce as distinguished from certain well known commercial yellow pines.

As shown by Bulletin 556 of the U.S. Department of Agriculture (Respondent's Exhibit 21) in the physical properties of weight, stiffness, strength, hardness, and shrinkage, ponderosa compares favorably with strobus. Expert witnesses from the United States Forest Products Laboratory place ponderosa in its mechanical properties with the typical white pine lumbers. There appears to be no serious question in this respect.

A statement by E. P. Ivory, formerly with the U.S. Forest Service, a witness called by the Commission, succinctly presents certain facts:

There are 37 pine species in the United States and just as the oaks are divided into white and red oak groups, so the pines are divided into white and yellow pine groups. Botanically, California white pine falls in the yellow pine group chiefly because it has three long needles in each bundle, whereas the white pines have five. The physical properties and uses of the wood cut from this tree, however, align it with the white pine group and set it apart very distinctively from the yellow pine group.

From the testimony of this witness there also appears the statement:

Physical properties of California white pine, as demonstrated in tests made at the U.S. Government Forest Products Laboratory, Madison, Wisconsin, and its uses, closely align California white pine with the botanical white pines. In fact, in many of its most important qualities and uses California white pine is more typically a white pine than are some species which botanically are classified as white pines.

**[621]** The finding of the Commission to which objection is principally directed as not being supported by the evidence reads:

True white pine lumber is far more durable than Ponderosa lumber when exposed to weather conditions. The Ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber. 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.

The gist of this finding is that true white pine lumber is far more durable and has a far less percentage of sapwood than ponderosa lumber, and that the close resemblance between the heartwood of true white pines and the sapwood of ponderosa is one of the greatest causes of confusion and deception in the marketing of the two species.

An exhibit in the record discloses that the sapwood of the true white pine tree appears to be about  $1\frac{3}{4}$  inches in thickness as compared with 3 inches for the yellow pine. The relative percentage of sapwood in a particular tree depends largely upon its diameter. The attention of the court is directed to a chart showing a strobus tree  $9\frac{1}{2}$  inches in diameter to have 60% sapwood, while a ponderosa tree 18 inches in diameter has 55% sapwood content, and trees of 21 inches in diameter have a sapwood content of 30% and 48%, respectively. While these figures are interesting as showing the proportion of sapwood and heartwood content of logs, they do not necessarily indicate the relative proportion of sapwood and heartwood content in the lumber produced therefrom. That there is a greater percentage of sapwood content in ponderosa lumber than there is in the true white pine lumber, there is no question. This variation, however, appears to be of importance only as it has a bearing upon the relative durability of the two classes of lumber. It is the sapwood which was found by the Commission to be more subject to decay when applied to exterior uses.

Upon the question of durability of ponderosa as compared with the true white pines the testimony of a number of witnesses appears in the record. A reference to the testimony of a few only will be sufficiently illustrative. Russel F. Whitehead, a New York City architect and editor of an architectural journal, testified that lumber made from ponderosa "is not a satisfactory substitute for genuine white pine to use in exterior of a building, in any way, shape or form." The witness further testified that he regarded it as reasonably satisfactory for interior purposes, "but not if exposed to the weather." W. B. Greeley, for seven years chief forester of the United States and now manager of the West Coast Lumberman's Association, Seattle, testified: "The genuine white pines have the reputation for greater durability in uses exposed to the weather. That would not apply to interior uses protected from the weather." George W. Kelham, for twenty-two years an architect in San Francisco, testified as to the use of ponderosa where exposed to the weather: "It is unsatisfactory under those conditions, and that

would be the general opinion of the architects that I know. \* \* \* It doesn't, in our opinion, last well. It decays more rapidly than other wood."

Prof. C. P. Winslow, director of the United States Forest Products Laboratory at Madison, Wis., since 1917, to the question, "What is the difference between white pine and *Pinus ponderosa* as to durability?" answered: "I don't know."

Prof. G. M. Hunt of the same laboratory, testified:

The general experience with the use of the White Pines during the 200 years since they began to be used indicated that these pines had moderately high durability. The general experience with *Pinus Ponderosa* indicated that that wood had low durability in contact with the ground or any place favoring the growth of decay. That is a matter of common knowledge.

To the question, "Have there been tests which will adequately settle the question as to the relative decay resisting qualities of the heartwood of *Pinus Ponderosa* and the heartwood of *Pinus Strobus*?" Professor Hunt answered: "There have not."

The weight to be given to testimony above outlined upon the question of the relative durability of the two lumbers is not as clear as it might otherwise seem to be, viewed in the light of other facts and circumstances. The expression that *ponderosa* lumber is not a satisfactory substitute "for use in exterior of a building, in any way, shape, or form," may well be viewed in the light of the fact that buildings erected from lumber from the [622] original Northern white pine forests have withstood the elements for two centuries, while but few, if any, erected with lumber from the *ponderosa* tree may lay claim to an age in excess of about seventy-five years. Specific instances of decay under ordinary conditions of upkeep are almost wholly lacking in the record. The director of the Forest Products Laboratory did not know what the difference in durability is. Professor Hunt's testimony was to the effect that it was a matter of common knowledge from general experience that *ponderosa* "had low durability in contact with the ground or any place favoring the growth of decay." As most of the lumber used even for exterior purposes does not come in contact with the ground, it would not necessarily follow that such lumber might not in other respects have moderately high durability unless the witness meant to say that any exterior use was a "place favoring the growth of decay." The testimony of the witness does not appear to warrant the latter interpretation. What the testimony appears to establish is that Northern white pine has relatively a greater durability for exterior use without establishing any comparative degree of such durability.

Upon the question of public confusion in the matter of lumber nomenclature, the testimony of a number of witnesses appears in

the record. Mr. Alfred Busselle, for twenty-five years a practicing architect in New York, specializing in high-grade residential work, testified: "In my experience there is a great deal of confusion in the pine market due to the terminology, and some of the confusion is quite honest. \* \* \* I know that California white pine connotes to some people a distinct type of wood, but it connotes to other people, white pine in general, and therein lies the confusion."

Those who are confused, generally speaking, the witness testified were the "millmen and the lumber dealers, as well as the architects." Just why architects and lumber dealers should be confused in view of the aid and assistance furnished by the Government through the Bureau of Standards is not readily apparent. It may properly be assumed that architects have a general knowledge of the qualities of the various materials they specify. If it is deemed important that a particular residence or other building be constructed of so-called true white pine because of its known or claimed superior wearing or other qualities, a reference to the standard commercial names, "Northern White Pine", "Idaho White Pine", or "Sugar Pine", will enable the architect to so specify, and the contractor and dealer to comply with the specifications. The testimony does not support a view that when architects so specify there is any confusion or even any material amount of intentional substitution of some other lumber than that specified. It is clearly established by the testimony that the true white pines are sufficiently well known in the trade to be able to command a higher price over that sold under the trade name of California White Pine or Ponderosa.

The testimony of a number of witnesses engaged in the retail trade in various States is to the effect that orders for white pine lumber without other designation, would be filled by any lumber using the designation "white", including California White Pine. It does not appear, however, from the testimony of these witnesses that in filling such orders with California White Pine, or with other lumber using the designation "white", and which was not a botanically true white pine, a practice prevailed of charging a price therefor on a basis of the market price for Northern or Idaho White Pine.

P. J. Curley, president for five years of a wholesale and retail lumber house at Chicago, testified:

It is commonly known among the sash and door men if a specification comes in for White Pine, they will furnish California White Pine or so-called Western Pine or Ponderosa Pine, without attempting to get the genuine Northern White Pine or Idaho White Pine.

The reason for the substitution the witness testified: "Is the lower price, lower cost to the sash and door men or to the interior men." The amount of such substitution the witness estimated at "about 95 percent."

If it be considered that manufacturers of sash and doors and exterior trim use ponderosa lumber principally in such manufacture, and supply the same when the specification calls for white pine, the important question remains of the character of material so supplied, and whether a price is charged therefor based on the difference in cost of the two lumbers. There is no testimony touching the question of price of this particular character of manufactured product. With the exception of the possible question of durability, the materiality of which has not been established, it does not otherwise appear the public is injured by action of such manufacturers. If, as testified by the witness Curley, these manufacturers use Ponderosa pine as readily as they do California White Pine in [623] filling specifications calling for white pine, it is not apparent that an affirmance of the Commission's orders would afford any relief if injury from such manufacture in fact occurs.

In the finding of the Commission complained of appears the statement: "It is the sapwood of ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness." In respondent's brief appears the statement: "True white pines excel ponderosa in the soft texture of the wood as an average \* \* \*." The court's attention has not been called to any tests made of the relative hardness of heartwood as compared with sapwood. The tests made by the United States Forest Products Laboratory for Hardness (side section) show Ponderosa softer by 2 percent and (end section) softer by more than 6 percent than *Strobus*. In comparison with the Southern Yellow Pine (longleaf) both woods are softer by more than 50 percent.

As bearing on the question relative to the contention that the use of the commercial name—California White Pine—is unfair to the trade, we quote the following excerpt from the brief of respondent:

Idaho white pine, in 1922 and 1923, had a premium of \$16 or \$17 per thousand feet. Since the decline of 1927 the premium has been but \$5.50 to \$8.50. In September, 1927, the Weyerhaeuser Sales Company made a drastic cut in Idaho white pine largely for the reason that the Weyerhaeuser concerns "had come to the conclusion that, because other woods not true white pines were being marketed under the white pine name, it was no longer possible to get the price preferences that we had previously gotten."

It may be noted, however, in connection with the foregoing statement, that the reduction in price did not occur until three years after the commercial name of half of the Ponderosa of commerce was changed from Western White Pine to Ponderosa.

It may be conceded that if the use of the commercial name—California White Pine—is prohibited in the lumber trade, Northern White Pine and Idaho White Pine will be able to command a higher price than that which now prevails over lumber produced from the

forests of Ponderosa pine. If this situation be conceded, and it be further conceded that the increased price of *Strobus* lumber finds a correlative reduction in the price of Ponderosa lumber, the further question remains whether such change in commercial methods of sale will be in the interest of the public.

The case of *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, is stressed in the brief of respondent as one presenting a "remarkable parallel" respecting the use of unfair methods, the prevention of which is in the interest of the public. From the opinion we quote the following excerpt:

A substantial part of the consuming public, and also some buyers for retailers and sales people, understand the words "Merino", "Natural Merino", "Gray Merino", "Natural Wool", "Gray Wool", "Australian Wool", and "Natural Worsted", as applied to underwear to mean that the underwear is all wool. By means of the labels and brands of the Winsted company bearing such words, part of the public is misled into selling or into buying as all wool, underwear which in fact is in large part cotton. And these brands and labels tend to aid and encourage the representations of unscrupulous retailers and their salesmen who knowingly sell to their customers as all wool, underwear which is largely composed of cotton.

The sale or purchase of a material as all wool which in fact is in large part cotton presents a situation which may not be said to be parallel to that presented upon the facts in this case. If a material from a gray wool from some other breed of sheep than a Merino were dealt with in commerce under the name of "Merino" or "Gray Merino", then there might be some parallel between the two cases. In the case at bar we are considering questions as between certain pine lumbers. The use of the word "white" is here sought to be prohibited in connection with the trade name of a lumber produced from a certain species of pine tree which botanically falls within the yellow pine group, but which in its industrial utility comes within the white pine group as known to commerce and industry. In the field of commerce and industry there are but two groups of pine lumbers—the white and the yellow. Primarily this grouping reflects the industrial utility of the several lumbers. While botanically, *Pinus Ponderosa* falls within the same general classification as *Pinus Polustris*, the lumber from which latter trees first became known to commerce as Southern Yellow Pine, Ponderosa in industrial utility possesses more nearly the qualities of *Pinus Strobus*, which as Northern White Pine was the first of the pines known to commerce using the designation "white."

It may be conceded that the evidence establishes that Northern White Pine lumber from the forests of Minnesota and Idaho [624] White Pine lumber possess certain qualities which make those lumbers a superior grade to lumber produced and sold as California White Pine. When we compare Idaho White Pine with Northern White

Pine we find that the Department of Agriculture (Exhibit 21) records the former as possessing greater strength and stiffness, but with all a softer quality. As said in the brief for respondent: "Lumber is a product of growth, not an inorganic, chemical product. Lumber from any given species, even the most uniform, will vary somewhat in quality. Where species are similar in average quality, or where the variations in a species are great there will be some overlapping." In considering California White Pine with Northern White Pine, for example, the fact may not be overlooked that the greater portion of the annual production of such lumber, 467,000,000 board feet, comes from second growth timber. Concerning this second growth lumber, in the brief of respondent, we read: "While most of the new growth of *Strobus* is being prematurely cut and used for inferior purposes, yet doubtless many areas are being allowed to stand for their maximum value." This statement is suggestive of the fact that the public interest is not promoted by the premature cutting of second growth timber.

In considering the fact that certain of the so-called true white pines produce lumber superior in certain respects to that produced from Ponderosa, there is also to be considered the fact that these species of true white pines differ also from each other as the so-called true yellow pines differ from each other. Whatever these differences are, in commerce and industry pine lumber is classified into two groups, white pine and yellow pine, and any lumber falls within one or the other of these two main groupings, largely if not entirely because of its peculiar industrial utility.

In considering the weight to be given to the fact that Ponderosa is not only not a botanical true white pine, but in certain respects is also inferior in a more or less uncertain degree to certain of the true white pines of commerce, the past history, as well as the future of the industry is deserving of consideration. The supply of the botanical true white pine is far more limited than that of Ponderosa. The public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests. In the brief for respondent appears this statement:

The superiority of true white pine lumber over ponderosa has been reflected in the fact that Northern White Pine, Idaho White Pine, and Sugar Pine have all commanded a higher price on the market than ponderosa. The price differentials still continue.

It is manifest from this statement that notwithstanding the fact that Ponderosa has been sold in markets throughout the country under the commercial name California White Pine, and under other names using the word "white", for more than fifteen years prior to

the institution of this proceeding, the so-called true white pines were able to command a higher price.

It is the conclusion of the Court that viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name California White Pine is an unfair method of competition or that its prevention would be in the interest of the public.

The orders complained of should be annulled and set aside. It is so ordered.

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**BROWN FENCE & WIRE CO. v. FEDERAL TRADE  
COMMISSION<sup>1</sup>**

No. 6272

(Circuit Court of Appeals, Sixth Circuit. May 9, 1933)

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

In proceedings for cease and desist order against seller of farm supplies by mail order, based on "factory to consumer" statements in catalogue, excluding evidence showing that 98 per cent of mail order competitors used similar terms *held* not error (15 USCA secs. 41-51).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

Evidence *held* to sustain cease and desist order against seller of farm supplies by mail order, based on "factory to consumer" statements in catalogue, without qualification.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.**

Absence of direct testimony tending to show that customers were imposed upon or deceived by representations made in catalogue held not fatal to cease and desist order against seller of farm supplies by mail order, where reasonable factual inferences may support findings of Federal Trade Commission.

(The syllabus is taken from 64 F. (2d) 934)

Petition to review cease and desist order of Commission. Order sustained.

**[935]** *John Wattawa*, of Washington, D.C., for petitioner.

*PGad B. Morehouse* and *Martin A. Morrison*, both of Washington, D.C. (*Robert E. Healy*, of Washington, D.C., on the brief), for respondent.

Before MOORMAN, HICKS, and SIMONS, Circuit Judges.

*SIMONS, Circuit Judge:*

Petitioner is engaged in the mail order business, selling farm supplies in interstate commerce through the medium of annual catalogs circulated in the rural districts of the United States. It

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<sup>1</sup> Reported in 64 F. (2d) 934. For case before Commission, see 16 F.T.C. 378.



owns and operates three factories manufacturing wire fencing and allied products, such as gates, tools, posts, and stretchers. The remaining articles listed in its catalog, including fence anchors, barbed wire extension arms, paint, roofing, tires, tubes, baby chicks, brooders, stoves, cream separators, nursery stock, heaters, and sprayers, are purchased from other manufacturers or producers, and shipped directly from the production point to the consumer. These general statements of the nature of the petitioner's business are subject to qualifications, which for present purposes it is unnecessary to note. The petitioner's catalog contains statements that it sells direct from the factory to the consumer; that the prices for the articles advertised are low because the consumer does not have to pay anything for a middleman's profit and expense, and that such prices are lower than others for the reason that customers pay only the actual cost of manufacturer, plus one small profit.

The Commission found *inter alia* that with reference to articles sold by the petitioner other than fencing and accessories manufactured in its own factories, and such articles as it purchased from other manufacturers at a loss to them, the petitioner is a middleman, and makes a profit by resale, in consequence of which the statements in its catalog, insofar as they refer to merchandise purchased rather than produced, have a tendency to mislead and deceive the public to induce it to purchase such articles from the petitioner in preference to its competitors, and that the methods involved are unfair methods of competition in interstate commerce and constitute a violation of the Federal Trade Commission Act.

In response to its findings of fact and conclusions of law, the Commission issued an order directed to the petitioner, its agents and employees, directing that in connection with the sale in interstate commerce of all articles not manufactured, produced or grown by the petitioner, they cease and desist from representing directly or by implication, that such articles are by it manufactured, fabricated, produced or grown, and from giving as the reason for its alleged ability to sell such articles at quoted prices the fact that they are furnished direct to the consumer from the petitioner's own factories, mills, nurseries, hatcheries, or other establishments, without any expense or charge for a middleman, or with but one profit plus the manufacturer's cost when such is not the case.

We are asked to set aside the Commission's order on the ground that the evidence does not support its findings in respect to the three prerequisites upon which a desist order must be based, (1) the methods complained of must be unfair, (2) they must be methods of competition in commerce, (3) a proceeding by the Commission to prevent the use of the methods must appear to be in the interest of the public. *Federal Trade Commission v. Raladam*, 283 U.S. 643. The

petitioner's denial of unfair methods rests mainly upon the assertion that the statements "Direct from factory"; "Direct to you", "From factory to you", "Factory prices", and similar phrases used in the catalog are literally true and so do not tend to mislead. Its contention that the methods are not methods of competition in commerce is based principally upon an offer to prove by the catalogs of other mail order houses that 98 percent of petitioner's competitors in the mail order business use such terms as "Factory prices" and "From factory to you" with respect to goods which they do not themselves manufacture, and that this is the custom in the mail order business. This evidence was excluded by the Commission, and its ruling is assigned as error.

Aside from a question of substantial competition that may still exist by reason of 2 percent of mail order houses refraining from employing challenged methods, there still remains the competition, undoubtedly substantial, of those who sell similar products through retail stores, agents or jobbers. The excluded testimony did not reach, nor purport to reach, that sort of competition. The contention that such competition is not competition in commerce is clearly without merit. But without regard to whether the offered testimony substantially covers the competitive field, it was not conclusive for another reason. The petitioner offered to prove that the phrases "Factory prices", "Direct from [936] factory", and "From factory to you" are commonly used in the mail order business, but the petitioner itself goes far beyond this. Assuming for the moment that there is no implication in such phrases that the factory referred to is one owned, operated and controlled by the petitioner, other statements in the catalog leave no room for doubt as to the meaning conveyed. In its 1931 catalog the petitioner used this language: "Every page of this book proves that it pays to buy your fencing and other farm and home needs direct from Jim Brown's factories." "Buying direct from my factories saves at least 33 $\frac{1}{3}$  percent of your purchasing dollar, because you pay no in-between profit to the dealer and jobber, who add no value, but who add their profits to the original factory cost. You save all this needless expense when you buy direct from my factories."

This language, without qualification confining it to those articles actually produced by the petitioner's factories, clearly supports the findings of unfair methods, and the offered proof not purporting to show similar methods by competitors, the language also sustains the finding of unfair competition, even upon the assumption that similar methods by competitors remove the petitioner's practices from control of the Commission's orders.

It also sufficiently appears that the proceeding was in the interest of the public. Whatever may have been our previous understanding of the line of demarcation between methods of trade which result at most in a private wrong and those in which there is specific and substantial public interest (which led to our decision in *Royal Milling Company v. Federal Trade Commission*, 58 F. (2d) 581), any misapprehension we may have entertained of the exclusive character of the tests to be applied thereto enumerated in *Federal Trade Commission v. Klesner*, 280 U.S. 19, has now been dispelled by the decision in *Federal Trade Commission v. Royal Milling Co. et al.*, 288 U.S. 212, decided February 6, 1933. The language of the Supreme Court in that case is peculiarly applicable here: "If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article or one equally as good but having a different origin."

A remaining contention must be noted. In the instant case the Commission produced no direct testimony tending to show that any of the petitioner's customers were imposed upon or deceived by the representations made in its catalog, and it is claimed that such omission is fatal to the case against it. We know of no reason why reasonable factual inference may not be the basis for the fact findings of the Commission as well as direct evidence. Price is so fundamental a factor in merchandising, and so persuasive in drawing customers to one competitor and from others, that it seems superfluous to demand direct proof of the efficacy of methods, frankly relied upon, to accomplish the results now denied.

The order of the Commission is sustained.

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## ARROW-HART & HEGEMAN ELECTRIC CO. v. FEDERAL TRADE COMMISSION<sup>1</sup>

No. 183

(Circuit Court of Appeals, Second Circuit. May 29, 1933)

### MONOPOLIES KEY—No. 20.

Clayton Act prohibiting acquisition by one corporation of shares of two or more corporations engaged in commerce where effect may be to lessen competition, restrain commerce, or tend to create a monopoly, was intended to prevent concentrated control by prohibited acquisition, which facilitates merger or consolidation of assets (Clayton Act sec. 7; 15 USCA sec. 18).

<sup>1</sup> The case is reported in 65 F. (2d) 336. The case before the Commission is reported in 16 F.T.C. 393. Judgment of lower court reversed by Supreme Court on March 12, 1934, 291 U.S. 587, 54 Sup. Ct. 532. For decision in this cause declining to require certification of trial examiner's report with transcript of record, see *ante*, p. 658.

**MONOPOLIES KEY—No. 24 (2).**

Utmost good faith should be used by corporation ordered by Federal Trade Commission to divest itself of stock acquired contrary to Clayton Act so as to remove concentrated ownership due to wrongful acquisition.

**MONOPOLIES KEY—No. 20.**

Completed merger by transfer of assets of two or more corporations before filing of complaint by Federal Trade Commission may not be attacked under Clayton Act (Clayton Act secs. 7, 11; 15 USCA secs. 18, 21).

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.**

Where Federal Trade Commission filed complaint against holding company for acquisition of stock of two corporations in violation of Clayton Act and plan of dissolution thereafter consummated resulted in consolidation of two corporations by organization of new corporation, Commission had jurisdiction of consolidated corporation.

**MONOPOLIES KEY—No. 24 (2).**

Where company is ordered to divest itself of stock of two or more corporations acquired in violation of Clayton Act, divestiture must be complete, and control illegally acquired may not be exercised to obtain assets of two competing companies.

**MONOPOLIES KEY—No. 20.****TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.**

Provision of Clayton Act requiring divestiture of stock illegally acquired also contemplates divestiture of assets acquired through exercise of illegal concentrated control which may be enforced by supplemental complaint where original complaint was filed before acquisition of such assets.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.**

In proceeding by Federal Trade Commission to compel divestiture of assets of two competing corporations acquired through concentrated control, evidence supported conclusion that Clayton Act was violated in that discontinuance of competition between the two corporations tended to restrain trade in electrical wiring device industry.

**MONOPOLIES KEY—No. 12 (1).**

"Competition" means more than rivalry between salesmen selling different brands of products of same quality, at same price, and manufactured by same company, and is eliminated where two competing units are brought under one dominant ownership.

**[337] MONOPOLIES KEY—No. 12 (1).**

Purpose of Clayton Act is to reach unlawful agreements in their incipiency.

(The syllabus is taken from 65 F. (2d) 336)

Petition by the Arrow-Hart & Hegeman Electric Co. to review order by Commission that petitioner divest itself of ownership of stock and a further direction that petitioner divest itself of plant and properties received through a merger of competing companies. Order affirmed.<sup>2</sup>

*Charles Neave*, of New York City, and *Arthur L. Shipman*, *Charles Welles Gross*, and *Wallace W. Brown*, all of Hartford, Conn., for petitioner.

<sup>2</sup> See also decision of court in this case, reported in 63 F. (2d) 108, declining to require the inclusion of the trial examiner's report in the record. See ante, p. 658.

*Robert E. Healy*, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, and *Everett F. Haycraft*, all of Washington, D.C., for respondent.

Before MANTON, SWAN, and AUGUSTUS N. HAND, Circuit Judges, SWAN, J., dissenting.

*MANTON, Circuit Judge:*

Respondent entered an order on a complaint filed under section 7 of the Clayton Act (15 USCA sec. 18) directing the Arrow-Hart & Hegeman Electric Co. to divest itself of the common stock of Hart & Hegeman Mfg. Co. and Arrow Electric Co., two corporations engaged in the manufacture of electrical devices in competition in interstate commerce. Both manufacturing corporations had issues of preferred stocks which were not transferred and which were part of the corporations' obligations as hereinafter stated.

The Hart & Hegeman Manufacturing Co. was incorporated in 1891, under the laws of Connecticut, having common and preferred stock. The Arrow Electric Co. was organized under the Connecticut laws in 1903 and it had both common and preferred stock. Its preferred stock was nonvoting except on six consecutive defaults of quarterly dividends. The common stocks of both corporations were closely held. Both corporations were engaged in the manufacture and sale of electrical wiring devices and were in direct and substantial competition. The respondent found that 59 percent of the Hart & Hegeman Mfg. Co.'s sales were in competition with the Arrow Electric Co. sales in 1927. The combined total sales of the two companies in 1927 was 24 percent of the total sales of the entire electrical wiring device industry.

Pursuant to an agreement of August 6, 1927, of the common stock-owners of both manufacturing companies and as a part of the plan to join the companies the Hart & Hegeman Mfg. Co.'s old preferred stock and also a preferred issue of the H. T. Paiste Co., its subsidiary, were retired and a preferred nonvoting stock and additional common stock were issued. Thereafter both Hart & Hegeman Mfg. Co. and the Arrow Electric Co. had outstanding preferred stock. On October 6, 1927, Arrow-Hart & Hegeman, Inc. (the holding company) was organized under the Connecticut laws with an authorized capital stock of \$2,000,000 of \$10 par common stock. On October 10, 1927, Arrow-Hart & Hegeman, Inc., acquired the 20,000 shares of Hart & Hegeman Mfg. Co. common voting stock in exchange for 80,000 shares of its stock, and acquired the 30,000 shares of the Arrow Electric Co. common voting stock in exchange for 120,000 shares of its common stock. It did not, however, acquire any of the two companies' preferred stock.

On March 3, 1928, the respondent issued its original complaint against Arrow-Hart & Hegeman, Inc., charging violations of section 7 of the Clayton Act. On September 7, 1928, this holding company filed an answer and on November 10, 1928, its directors recommended dissolution and distribution of its assets, consisting of the Arrow Electric Co. and the Hart & Hegeman Mfg. Co. common stock to the shareholders. A notice to the stockholders recommending such dissolution enclosed a form of proxy and consent to the plan of dissolution and expressed the view that efficiency and economy would be promoted by "actual merger and consolidation of the two companies." The stockholders meeting was called for December 10, 1928. To avoid federal tax on liquidation all the shares of common stock of the Arrow Electric Co. then held by Arrow-Hart & Hegeman, Inc., were transferred to Arrow Mfg. Co., a holding company for tax purposes, and in consideration therefor, the tax company issued all its capital stock to the stockholders of Arrow-Hart & Hegeman, Inc. All the shares of the common stock of the [338] Hart & Hegeman Mfg. Co. then held by Arrow-Hart & Hegeman, Inc., were transferred to H. & H. Electric Co., another tax company, and in consideration of this transfer the tax company issued all its capital stock directly to the stockholders of Arrow-Hart & Hegeman, Inc. These stockholders thus received the stock of the two tax companies. Arrow-Hart & Hegeman, Inc., then had no assets and was dissolved. The four corporations, the two manufacturing and the two tax companies, agreed to merge or consolidate and did so on December 31, 1928, under the Connecticut laws, into the Arrow-Hart & Hegeman Electric Co., petitioner. The preferred stock of Arrow Electric Co. and Hart & Hegeman Mfg. Co. constituted nearly 73 percent of their total par value capitalization and was in no way concerned with the organization or dissolution of Arrow-Hart & Hegeman, Inc., or with the formation of the tax companies. The capitalization of the petitioner was \$2,000,000—\$10 par value common stock and \$3,228,300 of \$100 par value preferred stock; 18,950 shares of preferred stock were issued for the Arrow Electric Co. preferred and 13,333 shares for Hart & Hegeman Mfg. Co. preferred; and 100,000 shares of common stock were issued for H. & H. Electric Co. common stock and 100,000 shares for Arrow Mfg. Co. common stock (then held by Arrow, Hart & Hegeman, Inc., stockholders' representatives).

On January 1, 1929, the board of directors of the petitioner held its first meeting and on January 28 the stockholders held their first meeting. On June 29, 1929, the respondent issued a supplemental complaint naming the petitioner as a new respondent and alleging that the original respondent Arrow-Hart & Hegeman, Inc., had

formed petitioner by the consolidation of the manufacturing and tax companies. The respondent found that the acquisition of the stock by Arrow-Hart & Hegeman, Inc., and the petitioner's acquisition of the assets of the manufacturing companies may have the effect of lessening competition between them and may restrain commerce in the electrical wiring device industry and has the tendency to create a monopoly.

The respondent concluded that the acquisition of stock by Arrow-Hart & Hegeman, Inc., and the voting of said stock which culminated in the organization of the petitioner, constituted a violation of section 7 of the Clayton Act. The second paragraph of section 7 reads:

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 the 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.

The order entered herein directs the petitioner to divest itself of stocks and assets of both manufacturing companies. Section 7 of the Clayton Act upon which the prosecution is based, addresses itself to the stock acquisition only and section 11 of the act gives the respondent power over a corporation violating the act to issue an order requiring it to cease and desist from the violation by divesting itself of the common stock held.

Congress intended to prevent, by section 7, a corporate control which could be concentrated by prohibited acquisition of stock. Wrongful acquisition of the stock facilitates a merger or consolidation of assets. When ordered to divest itself of stock, the utmost good faith should be used by a corporation in order to remove as far as possible the corporate concentration of ownership caused by the wrongful acquisition of stock. One method of divestiture would be to restore the exact status existing before the wrongful acquisition by distributing the stock acquired to its owners before acquisition. It should be recognized that where shares of corporations which pass from one owner to another are being considered it would be difficult, if not impossible, to transfer the stock to the identical group of shareholders who held the stock prior to the formation of the holding corporation. The stock wrongfully acquired might be sold to third parties. The holding company might have distributed its assets, consisting of stock of the competing companies, to its own stockholders in such a manner that each stockholder would have shares of both competing companies. For example, Arrow-Hart

& Hegeman, Inc., in exchange for the surrender in dissolution of its 200,000 shares, might have distributed the 30,000 common shares of Arrow Electric Co. and the 20,000 common shares of Hart & Hegeman Mfg. Co. in a ratio of 3 Arrow and 2 Hart & Hegeman for 10 Arrow-Hart & Hegeman, Inc. Corporate control would be removed, but some measure of com[339]mon ownership and common interest of a group of individuals in both competing companies would remain. That common ownership would be a result of the unlawful acquisition by the holding company and would facilitate a later merger or consolidation of the competing companies brought about by the individuals without any further intervention of the holding company.

But if the merger by transfer of assets is completed before the Federal Trade Commission filed its complaint, it cannot be attacked under the Clayton Act. *Thatcher Mfg. Co. v. Federal Trade Commission* (272 U.S. 554).

Whether, under the rule of *Federal Trade Commission v. Western Meat Co.* (272 U.S. 554) common ownership in individuals would be sufficient or, in addition, continued corporate control would be required to render the merger or consolidation objectionable and subject to action by the respondent, we need not decide because in the instant case both factors of common ownership and corporate control of even the details of the complete consolidation are present. The stock of the competing companies was retained in common ownership until the consolidation was completed.

And Arrow-Hart & Hegeman, Inc., did not distribute Arrow Electric Co. and Hart & Hegeman Mfg. Co. stock to its stockholders free from any plan of consolidation, but it did distribute the stock to the Arrow Mfg. Co. and H. & H. Electric Co. respectively, found by the respondent to have been established for tax purposes. Since that was their purpose, and since each tax company only held the stock of one manufacturing company, the plan would seem to be no more objectionable than direct distribution of Arrow Electric Co. and Hart & Hegeman Mfg. Co. stock to the Arrow-Hart & Hegeman, Inc., stockholders, if the tax companies' stock had been distributed to the Arrow-Hart & Hegeman, Inc., stockholders directly. But the tax companies' stock was not distributed to the Arrow-Hart & Hegeman, Inc., stockholders to merge or consolidate the four companies as they pleased free from control of Arrow-Hart & Hegeman, Inc. The letter of November 10, 1928, from Arrow-Hart & Hegeman, Inc., to its stockholders advised dissolution and distribution of stock of Arrow Electric Co. and Hart & Hegeman Mfg. Co. in kind to the stockholders. Proxies for that purpose were enclosed. The letter stated the belief that after distribution of the stock and liquidation



of Arrow-Hart & Hegeman, Inc., a consolidation would be proposed by the separate manufacturing companies and expressed a confidence that efficiency and economy would be prompted by consolidation.

After the tax companies were formed by Arrow-Hart & Hegeman, Inc., on November 30, 1928, a supplemental letter was sent to the stockholders on December 1, 1928. This letter outlined the entire plan of reorganization including the final steps for formation of the petitioner by consolidation and enclosed proxies authorizing six persons to act for the stockholders at a stockholders' meeting on December 6, 1928, to carry out the entire plan. The proxies authorized the named persons to receive the tax companies' stock and to exchange it for the stock of the consolidated company, the petitioner. By the exercise of these proxies the stockholders adopted the plan on December 6, 1928, and on the same day Arrow-Hart & Hegeman, Inc., transferred the stock of the manufacturing companies to the tax companies. Thus the stockholders of Arrow-Hart & Hegeman, Inc., were requested to and did accept the entire plan for formation of the petitioner before Arrow-Hart & Hegeman, Inc., divested itself of the manufacturing companies' stock. On December 31, 1928, at stockholders' meetings of the tax and manufacturing companies, the common shareholders being represented by their proxies, the plan was carried out and the petitioner was formed. This supplemental letter of December 1, 1928, and the enclosed proxies not only proposed a plan but went further. By the letter and the use of the proxies, Arrow-Hart & Hegeman, Inc., dictated and controlled the formation of the petitioner and therefore the petitioner comes under the jurisdiction and is subject to the order of the respondent. *Federal Trade Commission v. Western Meat Co.* (272 U.S. 554).

Divestiture of stock must be actual and complete and may not be effected by using the control resulting therefrom to secure title to the possessions of the competing companies' property. The purpose to be attained is to avoid the possibility of permitting consolidation or merger which substantially lessens competition in trade by the use of the stock held in merged ownership. *United States v. New England Fish Exchange* (258 Fed. 732, 746). The control which Arrow-Hart & Hegeman, Inc., was able to and did exercise [340] by ownership of the common stock even though there was outstanding in preferred stock 72 percent of the par value of the manufacturing companies' total stock issued, is a clear example of unlawful stock control providing the effect has been to substantially lessen competition.

We think section 11, requiring a divestiture of stock when section 7 is breached, contemplates also a divestiture of the transfer of the assets which came about through the ownership and use of the stock

unlawfully held by the holding company. The supplemental complaint filed June 29, 1929, could reach what was done by the formation of the petitioner and the transfer of assets to it. The powers of the respondent, confined as they are by the original and supplemental complaint to a violation of section 7, are sufficient to require not only divestiture of stock but also the divestiture of assets obtained through the means of stock ownership.

In 1927 the entire industry sold \$32,703,331 of the kind of products produced by the manufacturing companies. The Arrow Electric Co. sales amounted to \$3,849,000 and those of the Hart & Hegeman Mfg. Co. amounted to \$4,537,000. In 1929 the sales of the entire electrical wiring device industry amounted to \$43,120,095 of which the Arrow Electric Co. had \$3,584,000 and the Hart & Hegeman Mfg. Co. \$4,599,000. The total sales for 1928 were not proved, but the combined sales of both companies for 1927 were about 24 percent of the industry's total sales for that year. There is evidence to support the conclusion of the respondent that there was a tendency to restrain trade in the discontinuance of the competition between the two manufacturing companies.

Competition connotes more than mere rivalry between salesmen selling different brands of products of the same quality, at the same price, and manufactured by the same company. *Sinclair Refining Co. v. Federal Trade Commission*, 276 Fed. 686, 688 (CCA 7). Competition is eliminated where two formerly competing units are brought under one dominating ownership. *United States v. So. Pac. R. Co.*, 259 U.S. 214; *United States v. Union Pacific R.R. Co.*, 226 U.S. 61.

As has been often announced, the purpose of the provisions of the Clayton Act is to reach unlawful agreements in their incipency. *Standard Fashion Co. v. Magrane Houston Co.* (258 U.S. 346). In *International Shoe Co. v. Federal Trade Commission* (280 U.S. 291), the Supreme Court required evidence of substantial competition in fact, in order that there may be established an effect upon the public interest and said:

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.

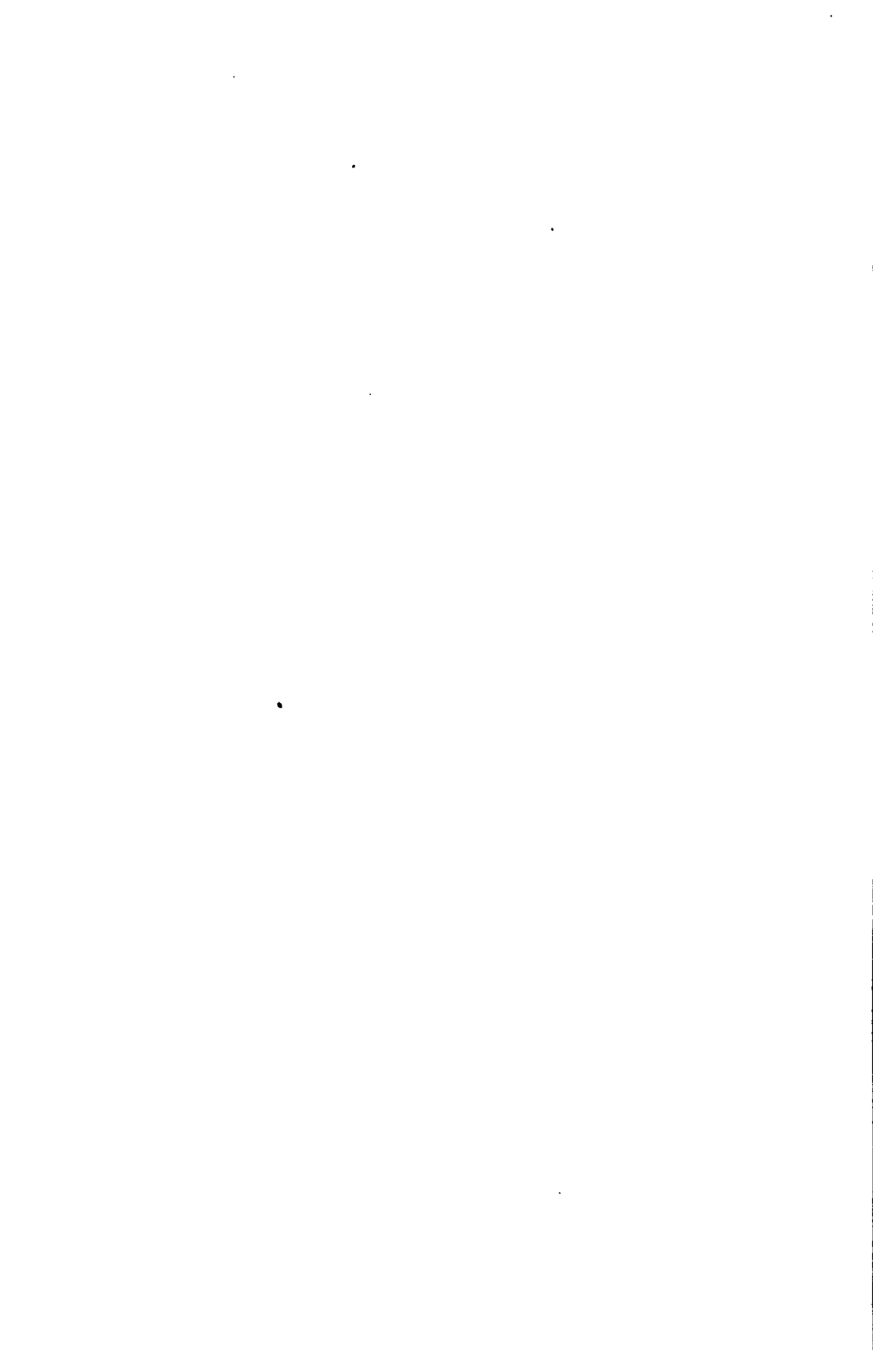
The converse is true and if there is real substance in the competition, the public interest is affected. In that case, only 5 percent of the commodities produced by each company were competitive, while in the instant case 59 percent by volume of sales of Hart & Hegeman Mfg. Co.'s products competed with Arrow Electric Co. products.

In *Vivaudou, Inc. v. Federal Trade Commission*, 54 F. (2d) 273, we found from the evidence that there was no tendency to create a monopoly or to restrain trade and that there was no substantial lessening of competition for the reason that there was a lack of competitive quantity and quality in the lines of articles produced by the three companies there involved. It appeared that two-thirds of one company's business consisted of talcum powder and a small volume of compacts, whereas the second company had a large sale of compacts and extracts and the third company's principal business was face creams.

But in the instant case, we think there was a substantial competition between the two companies acquired by the holding company through stock ownership with the result that there was a substantial lessening of competition in which the public was interested and petitioner violated section 7 of the Clayton Act.

Order affirmed.

Swan, Circuit Judge, dissents on the ground that the commission's order exceeded its jurisdiction.



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**APPENDIX**

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FEDERAL TRADE COMMISSION ACT  
CLAYTON ACT  
EXPORT TRADE ACT  
SHERMAN ANTITRUST ACT  
RULES OF PRACTICE

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# FEDERAL TRADE COMMISSION ACT<sup>1</sup>

[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 [718] 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.

<sup>1</sup> Reported decisions of the courts for the period covered by this volume (July 18, 1932 to June 18, 1933, inclusive) and arising under this act are printed in full at p. 637 et seq. Previously reported decisions will be found set forth in Appendix II of Volumes II-XIV, inclusive, of the Commission's Report, and in volumes 15 and 16 at p. 597, and at p. 667, respectively. 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."

Note should also be made of the case of *Crowell v. Benson*, Feb. 23, 1932, 285 U. S. 22, in which the Supreme Court gave extensive consideration to questions involved in judicial review of fact-finding bodies.

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.

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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. 1062-1964, 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. 16, 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; 9063; 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), 11528-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (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); Lippitt 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, 12530-12551 (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, 12980-12986, 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 date 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, employees, records, papers, 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.

[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.

May prosecute any inquiry anywhere in 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, <sup>“Documentary evidence.”</sup> and correspondence in existence at and after the passage of this Act.

“Acts to regulate commerce” means the Act entitled <sup>“Acts to regulate commerce.”</sup> “An Act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

“Antitrust acts” means the Act entitled <sup>“Antitrust acts.”</sup> “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety;<sup>2</sup> 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.

**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. <sup>Unfair methods unlawful.</sup>

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. <sup>Commission to prevent. Banks and common carriers excepted.</sup>

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 <sup>Commission to issue complaint when unfair method used and to public interest.</sup> <sup>To serve same on respondent with notice of hearing.</sup>

<sup>1</sup> For text of Sherman Act, see p. 735.

<sup>2</sup> 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. 695.

Provisions against unfair methods of competition extended by Export Trade Act (see sec. 4, p. 733) to include such methods used in export trade against competitors.

**Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.**

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.

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 make application, and upon good cause shown 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

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.

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.

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.

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.

Jurisdiction of Court 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

Proceedings to have precedence over other cases.

**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.<sup>4</sup>

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.**<sup>5</sup> (38 Stat. 721; USCA, sec. 46.)

SEC. 6. That the Commission shall 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, for both annual and special,

<sup>4</sup> For text of Sherman Act, see p. 735. As enumerated in last paragraph of sec. 4 of this act, see p. 699.

<sup>5</sup> 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, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, 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 commission 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 investigation. 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.

(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 transmit findings and recommendations to Attorney General.

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 readjustment 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 provide 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 legislation.

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 effect 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.

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. 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.

**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. 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.

Commission may order depositions at any stage.

May be taken before person designated by Commission.

Testimony to be reduced to writing, etc.

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.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

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.

**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 or 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

Willful refusal to submit documentary evidence to Commission.

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

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 ACT<sup>1</sup>

[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.)

*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

"Antitrust laws."

<sup>1</sup> 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) 392, 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) 182; *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 three preceding volumes, i. e., May 5, 1930, to June 18, 1933, inclusive, follow: *Pittsburgh & W. Va. Ry. v. U. S.*, 281 U. S. 479, 483, 484, 488; *American Can Co. v. Ladoga*, 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; *Gulterman 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, 284 U. S. 474 (Feb. 15, 1932); *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 volume 15, p. 616); *Iland v. Kansas City So. Ry. Co.*, July 16, 1931, 55 F. (2d) 712; *V. Vivaudou, Inc. v. F. T. C.*, Nov. 2, 1931, 54 F. (2d) 273 (see also volume 15, p. 631); *Crowell v. Benson*, Feb. 23, 1932, 285 U. S. 22; *Atwater v. Wheeling & L. E. Ry. Co.*, Mar. 8, 1932, 56 F. (2d) 720, 722; *F. T. C. v. Paramount Famous Lasky Corp. et al.*, Apr. 4, 1932, 57 F. (2d) 152 (see also volume 16, p. 660); *Gibson Canning Co. v. American Can Co.*, Sept. 26, 1932, 1 F. Supp. 242; *Arrow-Hart & Hegeman Elec. Co. v. F. T. C.*, Jan. 30, 1933, 63 F. (2d) 108 (see also this volume, ante, p. 658); *Fleetway v. Public Service Interstate Transp. Co.*, Jan. 10, 1933, 4 F. Supp. 482; *Arrow-Hart & Hegeman Elec. Co. v. F. T. C.*, May 29, 1933, 65 F. (2d) 336 (see also this volume, ante, p. 683); and *Pennsylvania R. Co. v. I. C. C.*, June 16, 1933, 66 F. (2d) 37.

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 \* \* \*";

July second, eighteen hundred and ninety;<sup>2</sup> 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," 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-<sup>"Commerce."</sup>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<sup>"Person" or "persons."</sup>this Act shall be deemed to include corporations and as-

#### 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.

<sup>1</sup> The Sherman Act (26 Stat. 209), which as a matter of convenience is printed herewith on p. 735 et seq.

**Sec. 1. DEFINITIONS—Continued.**

sociations existing under or authorized by the laws of 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.**<sup>3</sup> (38 Stat. 730; 15 USCA, sec. 13.)

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

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. 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.

**Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.**<sup>3</sup> (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-

<sup>3</sup> 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. 708, 709.

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 laws <sup>4</sup> 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.

<sup>4</sup> For text of Sherman Act, see p. 735. As enumerated in Clayton Act, see first paragraph thereof on p. 708.

**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.<sup>5</sup> (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.

<sup>5</sup> 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. 708, 709.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 732, sec. 3.)



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.<sup>6</sup> (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.

<sup>6</sup> By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, 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. 708, 709.

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:<sup>7</sup> *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.

<sup>7</sup> That part of the preceding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1920, ch. 581.

**Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS 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.<sup>8</sup>

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.

<sup>8</sup> 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. 8A. DIRECTOR, ETC., OF BANK, BANKING ASSOCIATION OR TRUST COMPANY, UNDER LAWS OF UNITED STATES, AS ALSO DIRECTOR, ETC., OF CORPORATION, OR PARTNER IN CONCERN, LOANING ON STOCK OR BOND COLLATERAL.**<sup>9</sup> (48 Stat. 194; 15 USCA, sec. 19a)

SEC. 8A. That from and after the 1st day of January 1934, no director, officer, or employee of any bank, banking association, or trust company, organized or operating under the laws of the United States shall be at the same time a director, officer, or employee of a corporation (other than a mutual savings bank) or a member of a partnership organized for any purpose whatsoever which shall make loans secured by stock or bond collateral to any individual, association, partnership, or corporation other than its own subsidiaries.

Prohibited, excepting mutual savings banks and own subsidiaries.

**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.

<sup>9</sup> Sec. 8A is added by section 33 of the Banking Act of 1933, approved June 16, 1933 (Public No. 66, 48 Stat. 162, 194).

**Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.** (38 Stat. 734; 15 USCA, sec. 20.)

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. 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 common 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.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

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

Commission to report violations, and its own findings to Attorney General.

views or findings regarding the transaction to the Attorney General.

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.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

Penalty.

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.<sup>10</sup>

Effective date extended to Jan. 1, 1921.

Except as to corporations organized after Jan. 12, 1918.

**Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS, APPEALS, SERVICE.**<sup>11</sup> (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

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.

<sup>10</sup> Above paragraph, sec. 601 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

<sup>11</sup> 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. 708, 709.

**Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE—Continued.**

Respondent to have right to appear and show cause, etc.

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

Intervention may be permitted for good cause.

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

Transcript of testimony to be filed.

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

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.

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 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

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.



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 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.

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 theretofore.

Commission or board may make new or modified findings by reason thereof.

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 charge 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.

**Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE—Continued.**

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

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.

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 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.)**

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 crimi-

nal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena 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.

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. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.** (38 Stat. 736; 15 USCA, sec. 24.)

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 thereof 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.

Deemed also that of individual directors, officers, etc.

A misdemeanor.

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

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. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT**—Continued.

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. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.** (38 Stat. 737; 15 USCA, sec. 26.)

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.** 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 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.

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.

**Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.** (38 Stat. 737; first two paragraphs are 28 USCA, sec. 381.)

No preliminary injunction without notice.

**SEC. 17.** That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

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

Temporary restraining order, to show date and hour of issue, define injury, etc.

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 temporary 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.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

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.)

Must set forth reasons, be specific, and described acts to be restrained.

Binding only on parties to suit, their officers, etc.

**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.

**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.)

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.

**SEC. 20.** That no restraining order or injunction shall be granted by any court of the United States, or a judge 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.

Acts specified in this paragraph not to be considered 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

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.

**Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL, PENALTIES—Continued.**

Failure of natural person to make return. Attachment against person.

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.

If body corporate, attachment for sequestration of its property.

Trial may be by court, or upon demand of accused, by jury.

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 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.

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

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.



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.)

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.

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. 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 ACT<sup>1</sup>

[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,*  
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.

"Export trade."

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.

"Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract

"Association."

<sup>1</sup> 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 does not appear to have been involved in reported cases.

**Sec. 1. DEFINITIONS—Continued.**

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.)

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. 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,<sup>2</sup> 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.

**Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.** (40 Stat. 517; 15 USCA, sec. 63.)

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

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,<sup>3</sup> 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.

<sup>2</sup> For text of Sherman Act, see p. 735.

<sup>3</sup> See *ante*, p. 712 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,<sup>4</sup> 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.

<sup>4</sup>See *ante*, p. 699 et seq.

**Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION—Con.**

District attorneys to prosecute for recovery of forfeiture.

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.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

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.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation

Commission given same powers as under Federal Trade Commission Act so far as applicable.

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."

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

**Sec. 3. CONTRACTS, ETC., AFFECTING TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY—Continued.**

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.)

Jurisdiction; circuit courts.

Procedure; by way of petition.

SEC. 4. The several circuit courts<sup>1</sup> 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.

**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

<sup>1</sup> Act of Mar. 3, 1911, c. 231, 36 Stat. 1167, abolishes the courts referred to, and confers their powers upon the district courts.



act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited 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. <sup>Procedure.</sup>

**Sec. 7. SUITS—RECOVERY.** (26 Stat. 210.)

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 court<sup>2</sup> 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. <sup>Threefold damages and costs.</sup>

**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 the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

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<sup>2</sup> See footnote on p. 736.

# RULES OF PRACTICE

## I. SESSIONS

- Principal office.** The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m.
- Commission may exercise power elsewhere.** The Commission may meet and exercise all its powers at 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.
- Hearings as ordered.** Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.
- Sessions for orders and other business.** Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10:30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.
- Quorum.**
- Orders signed by secretary.** All orders of the Commission shall be signed by the secretary.

### I-A. PERSONAL APPEARANCE

- Person or partnership.** Any individual or member of a partnership which is a party to any proceeding before the Commission may appear for himself or such partnership upon adequate identification, and a corporation or association may be represented by a bona-fide officer of such corporation or association.
- Corporation or association.**

### I-B. ADMISSION TO PRACTICE

- Attorneys: Qualifications.** Attorneys at law who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals or the Supreme Court of the District of Columbia, may be admitted to practice before the Commission.
- Denial of admission, suspension, or disbarment: Grounds.** The Commission may, in its discretion, deny admission, suspend or disbar from practice before it, any person who, it finds, does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or is guilty of unprofessional conduct. Any person who has been admitted to practice before the

Commission may be disbarred or suspended from practice for good cause shown but only after he has been afforded an opportunity to be heard.

II. COMPLAINTS

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Who may ask complaint.

Such application shall be in writing, signed by or in 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 applicant and of the party complained of.

Form of application.

The Commission shall investigate the matters complained 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 jurisdiction, 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 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.

Commission to investigate.

Issuance and service of complaint.

III. ANSWERS

(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 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. 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.

Time allowed for answer.

Form of answer.

Failure to deny any allegation.

(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

If respondent desires to waive hearing,—

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;

In cases under sec. 8 of 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.

Failure to answer.

(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.

Number of copies, signature, etc.

(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.

**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**

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.

Form of application.

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**

Continuances and extensions of time will be granted at the discretion of the Commission.

In discretion of Commission.

**VII. WITNESSES AND SUBPENAS**

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.

Examination ordinarily oral.

Subpenas for witnesses.

Subpenas 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.

Subpenas for production of documentary evidence.

Subpenas 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

Examination of witnesses to proceed as fast as practicable.

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 5 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.

Notice to counsel.

#### IX. OBJECTIONS TO EVIDENCE

To state grounds of objection, etc.

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.

#### X. MOTIONS

To briefly state nature of order applied for, etc.

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.

#### XI. HEARINGS ON INVESTIGATIONS

By single commissioner.

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.

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 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.

Examiner to take testimony.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

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 attorney for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "trial exam-

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

iner'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.

Time allowance for submission of tentative findings.

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

Commission may order.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Before person designated, etc.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Application for depositions.

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.

Testimony of witness.

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.

Deposition to be forwarded.

And filed. Copy to defendant or his attorney.



Such depositions shall be typewritten on one side only Size of paper, etc. 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.

No deposition shall be taken except after at least 6 days' Notice. notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

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 where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing. Limitations as to time.

**XIV. DOCUMENTARY EVIDENCE**

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. Relevant and material matter only to be filed.

**XV. 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. Filed with secretary. Twenty copies of each brief shall be furnished for the use of the commission unless otherwise ordered. Proof of service. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Number. Every brief, except the reply brief on behalf of the commission, hereinafter mentioned, shall contain in the order here stated: To contain exceptions to trial examiner's report.

(1) A concise abstract or statement of the case. Form. Abstract of 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. Brief of argument.

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. Index.

**Printing.**

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.

**Reply brief.**

The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.

**Time for briefs.**

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.

**Service of Commission brief.**

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.

**Oral arguments.**

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.

**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. <sup>Within time specified and in writing.</sup>

**XVII. REOPENING PROCEEDINGS**

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. <sup>Within 90 days and for good cause.</sup>

**XVIII. ADDRESS OF THE COMMISSION**

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed. <sup>Washington, D. C.</sup>



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<sup>1</sup> Page references to stipulations of the special board are indicated by italics. Such stipulations are also distinguished by figures "0" preceding the serial number, e.g., "01", "02", etc.

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Misrepresenting unit quantities:	
As to—	
Liquid measure.....	437 (969)
Offering deceptive inducements to purchase:	
Through—	
Exhibiting samples superior to product supplied.....	473 (1028)
Furnishing grade inferior to sample or promise.....	473 (1028)
Promising grade superior to that supplied.....	473 (1028)
Representing or offering—	
Earnings of agents falsely or misleadingly.....	525 (0357), 529 (0360, 0361), 537 (0369), 547 (0390), 555 (0405), 561 (0428), 564 (0436), 566 (0441), 570-573, 586 (0466), 618 (0510).
Free—	
Premiums, price of which included in charge otherwise demanded.....	501, 586 (0466)
Product—	
Price of which included in charge otherwise demanded.....	441 (977), 449 (991), 484, 490 (1059), 572, 573, 586 (0466), 599, 618 (0510)
On pretext, special selection of prospect.....	490 (1059)
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Samples, where "charge to cover mailing costs".....	594
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Limited or special offers, falsely or misleadingly.....	441 (977), 599

Stipulations

Offering deceptive inducements to purchase—Continued.

Through—Continued.

Representing or offering—Continued.

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Opportunities of agents falsely or misleadingly .....	588 (0466)
Terms of service or offering, falsely or misleadingly .....	441 (977)
Using puzzle prize advertisements misleadingly .....	528, 537 (0368), 614 (0502, 0503)

Securing agents falsely or misleadingly:

Through—

Misrepresenting—

Earnings of product or service falsely or misleadingly ..	525 (0357)
Using puzzle prize advertisements misleadingly .....	528

Simulating:

Container of competitive product .....	443 (980)
Trade name of competitive product .....	443 (980)

Unfair methods of competition condemned. *See—*

Advertising falsely or misleadingly.

Assuming or using misleading trade or corporate name.

Claiming or using endorsements and/or testimonials falsely or misleadingly.

Maintaining resale prices.

Misbranding or mislabeling.

Misrepresenting business status, advantages or connections.

Misrepresenting prices.

Misrepresenting product.

Misrepresenting unit quantities.

Offering deceptive inducements to purchase.

Securing agents falsely or misleadingly.

Simulating.

Using misleading trade name or mark.

Using misleading trade name or mark:

As to—

Composition of product .....	465 (1015)
Domestic product being imported .....	465 (1015), 477 (1034)
Qualities or results of product .....	449 (990), 454 (1000)
Quality .....	457, 467 (1018), 469 (1021)
Source or origin of product—	
Maker .....	478 (1036)
Place .....	476, 481 (1043)