

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

JUNE 19, 1933, TO APRIL 23, 1934

—————
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—————

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MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF APRIL 23, 1934

GARLAND S. FERGUSON, Jr., *Chairman*.

Took oath of office November 14, 1927, and January 9, 1928.¹

EWYN L. DAVIS.

Took oath of office May 26, 1933.

JAMES M. LANDIS.

Took oath of office October 10, 1933.

GEORGE C. MATHEWS.

Took oath of office October 27, 1933.

CHARLES H. MARCH.

Took oath of office February 1, 1929.

OTIS B. JOHNSON, *Secretary*.

Took oath of office August 7, 1922.

During the period June 19, 1933, to April 23, 1934, there also served as commissioners—

WILLIAM E. HUMPHREY.

Took oath of office February 25, 1925, and February 5, 1932.¹ Service terminated October 7, 1933.

RAYMOND B. STEVENS.

Took oath of office June 26, 1933. Service terminated September 25, 1933.

¹ Second term.

ACKNOWLEDGMENT

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

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² Relating to N. R. A. cases before the Commission.

³ Jurisdiction of Commission re complaint relative to marketing agreement under Agricultural Adjustment Act.

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² In addition to the four securities opinions mentioned above, the Commission also handed down opinions in two of the cases in this volume, namely, Vanadium Alloys Steel Co., and Walker's New River Mining Co.

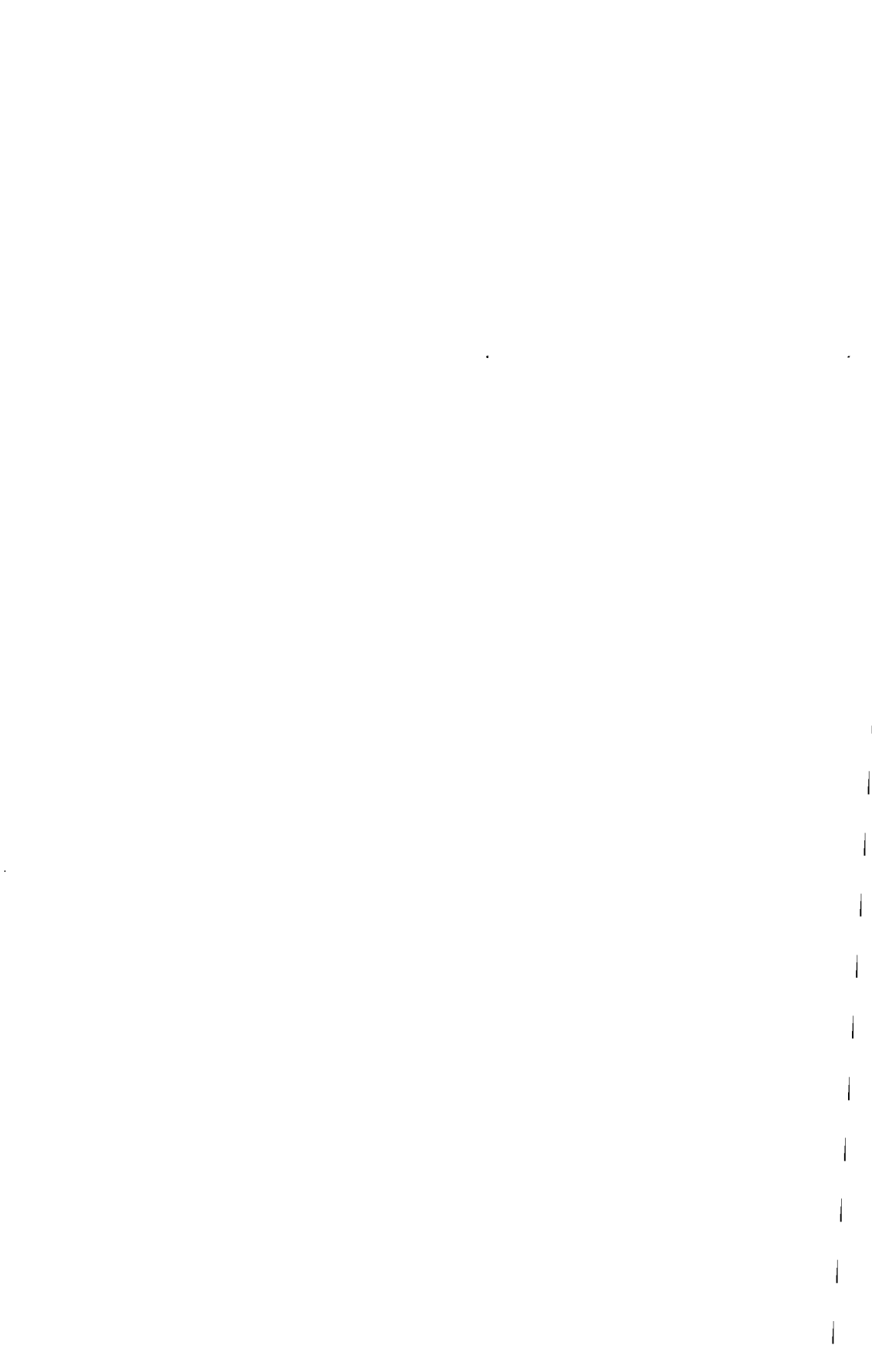
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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 19, 1933, TO APRIL 23, 1934

IN THE MATTER OF E. GRIFFITHS HUGHES, 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 1966. Complaint, Aug. 13, 1931—Decision, June 19, 1933

- Where a corporation engaged in the sale of a laxative salts, and a bath salts, to wholesale and retail druggists;
- (a) Represented in advertisements in newspapers and magazines that said laxative salts constituted a cure for obesity and would reduce excess fat, facts being that preparation in question, sold with detailed directions for diet recommended in connection with taking thereof, constituted a saline laxative similar to numerous other preparations in competition with which it was sold, and, while of possible value, along with other similar laxatives, in connection with treatment of obesity through diet and exercise, did not itself constitute a cure or remedy for such condition;
- With capacity and tendency through additional appeal thus given said preparation over and above the properties also claimed for it as a saline laxative, eliminant, and aperient, to drive other similar laxatives not thus misrepresented from the market, and thereby unduly restrain trade in the general class of commodities concerned, injuriously affect competitors dealing in bona fide preparations adapted to and used for reduction of excess fat and sold through drug stores to the general public, at its solicitation or on prescription of a physician, and mislead and deceive purchasing public and induce their purchase of preparation in question as and for an obesity remedy; to the substantial injury of said competitors; and
- (b) Represented said bath salts in advertisements in newspapers and magazines as a preparation, which (1) radiated great quantities of oxygen, with invigorating effect, (2) had physiological and therapeutic effects upon the body, (3) was imported from England, (4) had the properties of the famous old spas and produced the effects of treatment at such places, and, (5) had medicinal and therapeutic effect, facts being preparation had no such effects as claimed, and aforesaid statements and representations were false and unwarranted in every respect; with capacity and tendency to mislead and deceive the purchasing public as to said preparation and induce purchase thereof in such mistaken belief;
- With effect of diverting business to it from competitors who in no way misrepresent the quality, uses, effects, properties, or origin of the products dealt in by them, and with tendency so to divert, to the substantial injury and prejudice of such competitors:

Complaint

18 F.T.C.

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

Mr. Harry D. Michael for the Commission.

Mr. Albert Edward Maves, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of certain proprietary preparations to wholesale and retail druggists in States other than the State of New York, for ultimate resale to the consuming public, and with principal office and place of business at Rochester, with advertising falsely or misleadingly, and misbranding or mislabeling as to properties, results, and source or origin of product, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth for more than one year last past in the sale of its "Kruschen Salts" and "Radox Bath Salts" or "Radox" through advertisements in newspapers and magazines and through statements on the cartons of its said bath salts, and on leaflets and circulars enclosed therewith, makes false and misleading statements which represent or imply that said Kruschen Salts constitute a cure or remedy for obesity and will reduce excess fat, and that said Radox Bath Salts, when used in bath and as otherwise directed, releases and radiates great quantities of oxygen, thereby producing an invigorating and energizing effect upon the body as well as other physiological and therapeutic effects; also that "the use of said preparation relieves pain and that it has medicinal or therapeutic value in various uses; that it is imported from England; and that it combines the properties of the world-famous medical spas and produces the effects of treatment at such places."¹

¹ Advertisements set forth in the complaint relating to said Kruschen Salts include the following:

"The Modern Way to Slenderize."

"Kruschen Salts has proved itself a thoroughly dependable, quick, pleasant, and what's best—a Safe and, Healthy method of reducing."

"Here's the recipe that banishes fat and brings into blossom all the natural attractiveness that every woman possesses. Every morning take one-half teaspoonful of Kruschen Salts in a glass of hot water before breakfast. Be sure and do this every morning for 'It's the little daily dose that takes off the fat!'"

"Kruschen method of weight reduction sensible and safe."

"Get on the scales today and see how much you weigh—then get an 85-cent bottle of Kruschen Salts (lasts 4 weeks), take one-half teaspoonful every morning in a glass of hot water and when you have finished the first bottle weigh yourself again."

"The Modern Safe Way—Right Way to Lose Fat."

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Complaint

The facts are, as alleged, that said first named product does not materially reduce excess fat, but merely acts as a purgative or laxative or diuretic, and said bath salts "when used in the bath and as otherwise directed, do not release and radiate any material amount of oxygen and not sufficiently to have any material physiological or therapeutic effect upon the human body; that said salts, when used as aforesaid, do not have any material medicinal or therapeutic value, and statements and representations to that effect are greatly exaggerated, unwarranted, and misleading; that said salts are not imported from England but are prepared for respondent in this country; and that said salts do not combine the properties of the world-famous medical spas nor does their use at home produce the effects of treatment at such places."

Said misleading, erroneous and exaggerated representations of respondent, as charged, have had and do have the tendency and capacity to (a) confuse, mislead, and deceive members of the public into believing that said Kruschen Salts are a cure or remedy for obesity and that their use will reduce excess fat, and that said "Radox" bath salts "when used in the bath and as otherwise directed, radiate oxygen in great quantities and sufficiently to produce an invigorating and energizing effect and to produce material physiological and therapeutic effects; that said salts, when used as aforesaid, have material medicinal and therapeutic value; that they are imported from England and that they combine the properties of the world-famous

Advertisements relating to "Radox"—

"Radox Bath Salts not only combines the same valuable properties of the world-famous Spas of Marienbad, Carlsbad and Vichy, but it also radiates great quantities of oxygen in your bath water—and everyone knows what wonderful effects oxygen has on the system! Never before have you ever felt so refreshed and soothed, your entire system is stimulated to a new life and activity."

"Right from England—"

Statements appearing on the cartons and packages of said "Radox Bath Salts"—

"Radox Radiates Oxygen."

"A balanced preparation which impregnates the water of the bath or hand basin with valuable salts, and super-charges it with oxygen, forming an artificial mineral water combining the properties of the world-famous medicinal spa waters of Carlsbad, Vichy, Marienbad and Similar Baths."

"When you add Radox to your bath—Oxygen is liberated—enlivening and gloriously stimulating the entire body."

"It has an antiseptic action."

"Promotes the elimination through the pores of the skin of acid secretions from the blood, often the basic cause of Many Skin Affections."

"Radox Bath Water is a * * * sedative in cases of skin affections."

"All soreness, inflammation, due to chilblains * * * soreness pains * * * are relieved quickly by a Radox Foot Bath."

Statements appearing on the leaflets or circulars enclosed therewith—

"Tired, fidgety nerves are quieted—"

"Here from England—"

"Radox (a balanced preparation of mineral salts), dissolved in the bath form an artificial mineral water super-charged with energizing oxygen, bringing within reach of all the cleansing, rejuvenating, energizing benefits of many of the World Famous Spa Waters of Europe and similar medicinal baths hitherto only enjoyed by the wealthy."

spas and that their use produces the effects of treatment at such places", and to (b) induce members of the public, by reason of the erroneous beliefs thus engendered, to purchase and use such products and to divert trade to respondent from competitors engaged in sale in interstate commerce of similar preparations; all to the prejudice and injury of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, E. Griffiths Hughes, Inc., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having been heard in oral argument before 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

PARAGRAPHS 1. The respondent, E. Griffiths Hughes, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its principal place of business in the city of Rochester in the State of New York. Said respondent is now and has been engaged for more than five years last past in the sale in interstate commerce of certain proprietary preparations, known and designated respectively as "Kruschen Salts" and "Radox Bath Salts", or "Radox", to wholesale and retail druggists located in the various States of the United States, other than the State of New York, for ultimate resale to members of the public. Said respondent causes and has caused its said products when so sold to be transported in interstate commerce from its said

1

Findings

place of business in the State of New York to, into and through States of the United States other than New York, to such wholesale and retail dealers to whom said products are and have been sold.

PAR. 2. The respondent herein, in soliciting the sale of said Kruschen Salts has made use of advertisements inserted in newspapers and magazines circulated in and among the various States of the United States to members of the public, which said advertisements contain statements which represent or imply that said preparation is a cure or remedy for obesity and that it will reduce excess fat. Among such statements so used by respondent in referring to said salts are the following:

Its the little daily dose that does it.

The modern Way to Slenderize.

Kruschen Salts has proved itself a thoroughly dependable, quick, pleasant, and what's best—a *safe and healthy* method of reducing.

Here's the recipe that banishes fat and brings into blossom all the natural attractiveness that every woman possesses. Every morning take one half teaspoonful of Kruschen Salts in a glass of hot water before breakfast. Be sure and do this every morning for it's the little daily dose that takes off the fat.

If you want to lose fat with speed get an 85-cent bottle of Kruschen Salts.

A youthful slender figure means everything today and women have at last found an unusually effective, pleasant, and actually healthy way to control their rebellious curves with Kruschen Salts.

Kruschen method of weight reduction sensible and safe.

Get on the scales today and see how much you weigh—then get an 85-cent bottle of Kruschen Salts (lasts 4 weeks), take one half teaspoonful every morning in a glass of hot water and when you have finished the first bottle weigh yourself again.

The Modern Safe Way—Right Way to lose Fat.

A fashionable slender figure as well as glorious magnetic health can now be yours! Just take a half teaspoonful of Kruschen Salts in a glass of hot water every morning before breakfast.

and other statements of like import. ¹

PAR. 3. Kruschen Salts is a saline laxative, the qualitative and quantitative analysis of which, as shown by the testimony, is as follows:

	Approximate percentage
Magnesium sulphate	66.70
Sodium sulphate	2.17
Potassium sulphate	8.30
Sodium chloride	10.70
Potassium chloride	(trace)
Citric acid	1.45
Water of hydration to make	100.00

The above is the analysis of said product as deduced from the testimony of the chemists who testified on behalf of the Commission. Qualitatively, said analysis is corroborated by respondent's testi-

mony. No quantitative analysis was given by respondent's witnesses. The president of respondent company, appearing as a witness for respondent, testified that said ingredients represented the qualitative composition of Kruschen Salts and stated in regard to potassium chloride merely that there was no question about it being contained therein. However, he did not state the percentage of potassium chloride and refused to give the quantity when asked for it by counsel for the Commission on cross-examination, said refusal being insisted upon after an objection to the question by respondent's attorney was overruled. Consequently, the presence of said ingredient in the quantity of a trace, as stated above, is taken as correct.

However, respondent has not contended that potassium chloride is the effective ingredient in Kruschen Salts in the treatment of obesity, and no evidence was offered to that effect. On the other hand, there is substantial evidence in the record that potassium chloride is not indicated in the treatment of obesity, and there is no evidence to the contrary. There is also unrefuted testimony that the addition of potassium chloride to a preparation of the foregoing analysis in a greater amount than a trace would not result in a mixture constituting a treatment for obesity, or indicated in such treatment. Respondent offered no evidence to refute said percentages given in the above analysis, other than the testimony given by the president of respondent company, referred to above, in regard to potassium chloride. Said witness refused to answer such questions as were put to him by the attorney for the Commission on cross-examination in regard to the quantity of ingredients, although he was instructed to do so by the examiner who presided at the hearing. There is no evidence that the claimed function of Kruschen Salts in reducing excess fat is due to the proportions in which the various ingredients are present.

Five doctors of medicine and one pharmacologist testified on behalf of the Commission to the general effect that a preparation of the constituents as given above, and taken in the dosage recommended by respondent, does not constitute a treatment for obesity and will not of itself reduce excess fat. Some of these witnesses also testified that no single ingredient taken by itself is so indicated. Only one medical witness gave contrary medical opinions on behalf of respondent, and this witness gave no satisfactory scientific explanation of the action of said preparation or of any of its ingredients in this regard, nor was any given by any other witness. Said witness advanced the theory that a loss of fat results because of the formation of insoluble soaps in the small intestine after the ingestion of magnesium sulphate (epsom salts), because of the formation of

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magnesium bicarbonate and sodium sulphate, and the subsequent combining of the magnesium bicarbonate with fats contained in the ingested meal, and thus the fats so affected would not be absorbed.

However, said witness stated that he had no experimental knowledge of the theory advanced, and that he did not know that anyone else had such knowledge. It was shown by Commission's evidence that such effect would not result to any appreciable extent. It was further shown that it would not likely ensue because of the fact that the Kruschen Salts, when taken before breakfast, as directed, as a treatment for obesity, is taken long after the food of the day before has passed from the stomach and small intestine into the colon. Besides, the salts pass from the stomach ahead of any fats that may be included in the morning meal, with the result that there is little, if any, fats to be so acted upon. Moreover, it was shown that even if such action took place, the amount of fat so affected would be insignificant. Said theory, moreover, fails to take into account the effects of carbohydrates as fat-producing foods. It is shown by the testimony that carbohydrates constitute the chief part of the diet and are one of the chief sources of excess fat in the body.

Said medical witness for respondent is the author or editor of various books in which methods of treatment of obesity are given which prescribe diet as the controlling factor and which do not give saline laxatives as the effective medium in such treatment. Extracts from said books introduced in evidence are not in harmony with the testimony of said witness but support the scientific opinions expressed by witnesses for the Commission.

Five other doctors of medicine testified on behalf of respondent but their testimony does not consist of medical opinions on the question involved. All gave testimony to the effect that they gave Kruschen Salts to various patients and that such patients after a time showed losses of weight. The medical witness previously referred to gave similar testimony in addition to his other testimony. The Commission finds that said tests, so-called, were not scientifically conducted or controlled and were not of such a character as to warrant the conclusion or to be the basis of an opinion that the taking of the Kruschen Salts effected any reduction in weight that might have ensued in such cases. Further, such tests were not so conducted as to eliminate from consideration intervening causes or factors which bring about loss of fat or loss of body weight. The evidence in regard to such so-called tests is unsatisfactory, inconclusive, and entitled to but little weight. Respondent's claim that Kruschen Salts of itself will effect reduction is further not in harmony with detailed directions for dietary treatment contained in a circular

enclosed in the package of salts which are recommended to be followed in connection with the taking of the medicine, as well as such suggestions embodied in some of the advertising matter.

After considering all the evidence the Commission finds that Kruschen Salts does not constitute a cure or remedy for obesity and does not of itself reduce excess fat.

PAR. 4. There are many proprietary preparations sold in interstate commerce in the United States of the same general character as Kruschen Salts. Among such products, as shown by the evidence, are Carlsbad Salt, Carlsbad Water, French Lick Salts, Pluto Water, Sal Hepatica, Squibb's Epsom Salts, Squibb's Laxative Salt, Squibb's Milk of Magnesia, Jad Salts, Eno's Effervescent Salt, Sal Vita, ADS Laxative Salt, Abbott's Sal Lithia, Abbott's Saline Laxative and Puretest Epsom Salts. All of said preparations come under the general classification of saline laxatives as does Kruschen Salts. All produce a laxative effect when taken in proper dosage, the extent of the laxative effect depending upon the size of the dose. Kruschen Salts produces a mild laxative effect when taken in the dosage advertised by respondent for the treatment of obesity. Larger doses increase such effect.

Kruschen Salts is described as "an agreeable aperient employed when an intestinal flush and bowel activator is indicated" on the cartons in which it is displayed for sale and sold. Further, it is recommended thereon for its "therapeutic efficiency" in "promoting the elimination of the waste from the intestinal tract" and for use where "a mild saline laxative is required."

In some of its published advertisements, as shown by exhibits in evidence, respondent makes many statements indicating the use of its salts as a laxative and as an eliminant. Among such statements are the following:

* * * the six revitalizing salts of Kruschen that keep your body free from toxins and acid and cause your internal organs to function properly * * *.

* * * * *
Kruschen is more than just a mere laxative salt—it's an ideal blend of six separate minerals which not only eliminate poisons and waste accumulations but which * * *.

* * * Kruschen keeps the bowels, kidneys and liver in fine condition—it frees you from poisons and toxins * * *.

* * * Kruschen is a superb combination of SIX separate mineral salts which act on glands, nerves and body organs as do the salts at the famous and expensive Spas of Europe.

It keeps the body free from harmful acids and poisons * * *.

* * * they clean out the impurities in your blood by keeping the bowels, kidneys and liver in splendid working shape * * *.

* * * Remember Kruschen is more than just a laxative salt * * *.

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* * * When you take a half teaspoonful of Kruschen Salts in a glass of hot water every morning before breakfast, you are putting into your system a superb combination of 6 mineral salts which help the blood, glands, nerves, and body organs to function properly—and eliminate waste accumulations * * *.

Kruschen Salts are the daily health dose of millions of people the world over.

One-half teaspoonful of Kruschen in a glass of hot water every morning gently but surely stimulates the liver, bowels and kidneys to a healthy elimination.

One bottle of Kruschen Salts (lasts 4 weeks) costs but a trifle and one bottle will prove a vast benefit to people who have constipation, headaches, indigestion, rheumatism, depression, acidity, and autointoxication through improper elimination.

A half teaspoonful in a glass of hot water every morning amazingly helps to keep one healthy and the stomach, liver, bowels and kidneys in splendid condition—frees your system from harmful toxins and acids.

Unlike most salts Kruschen isn't simply a laxative—if that's all you want any old kind of salts with any kind of a label will do—but is that all you want?

There is evidence that in some drug stores saline laxatives, including Kruschen Salts, are displayed together on the shelves. There is some evidence that lay people entertain a belief that saline laxatives are effective in reducing excess fat. The evidence discloses that a saline laxative may be used in connection with other treatment for obesity for the purpose of relieving constipation or producing evacuation of the bowels if such is desirable for any reason where conditions for such use exist. Such conditions may exist in many cases of obesity. Any of the saline laxatives named herein could be used for such purpose and any could be advertised for such use in connection with a true reducing treatment.

At least two of the saline laxatives named above, to wit, Carlsbad Salts and Carlsbad Water, are recommended for use in the treatment of obesity in connection with diet and exercise. All of said saline laxatives, doubtless, could properly be advertised in the same way, provided their true functions were indicated and it were not represented or implied that such salts constituted the reducing medium. It further appears that French Lick Salts is recommended as being useful in the treatment of obesity.

The Commission finds that Kruschen Salts is in competition with the products referred to and that trade would necessarily be diverted to respondent from such competitors by reason of misleading representations as to the effects of Kruschen Salts in the treatment of obesity. Since Kruschen Salts is designated and known as a saline laxative and advertised for its use as a laxative in addition to its advertised use as a treatment for obesity, the latter claim gives the

product an additional sales appeal calculated to increase its sale at the expense of other saline laxatives not so advertised. Advertising by respondent that Kruschen Salts of itself effects reduction, since such claim is unwarranted, is unfair to competitors who sell saline laxatives for use with a reducing diet without any claim that the saline laxatives effect reduction.

Several representatives of dealers in saline laxatives were asked for their opinions as to whether or not their products were in competition with Kruschen Salts and as to the competitive effects of representation as to the latter as a treatment for obesity. Mr. Neville R. Ashcroft, treasurer of Harold F. Ritchie & Co., Inc., sales agent for Eno's Effervescent Salts, testified that his company considered their product to be in competition with Kruschen Salts. When asked his opinion as to the effect of representations that Kruschen Salts is a remedy or treatment for obesity on the sale of other saline laxatives, he said that it was a hard question to answer, that Eno's is in a class by itself and that users of his product would use no other. However, he said:

We have never advertised it as a fat reducer. We feel that, if a person goes into a store and has the two products put side by side, if they want the saline laxative properties as well as the fat-reducing properties, there might be a tendency to buy Kruschen's and not buy Eno. But, if they are looking for Eno's, or are looking for a laxative and are not particularly interested in a fat reducer, we do not think that the mere fact that Kruschen is selling it as a fat reducer would affect the sale of Enos.

Henry C. Young, in charge of the medicine department of Louis K. Liggett Co., when asked if his company handled "other saline laxatives that are in competition with Kruschen Salts", replied, "Yes, sir", and then explained his answer by saying, "We carry other saline salts."

Lee H. Bristol, vice president of Bristol-Myers Co., manufacturers of and dealers in proprietary articles, among which is Sal Hepatica, an effervescent saline laxative, stated that, as a matter of opinion, Sal Hepatica is in competition with Kruschen Salts. He further testified that misrepresentation of a saline laxative for weight reduction, if such representations are accepted, would have a general tendency to increase the sales of the product so misrepresented and decrease the sale of other saline laxatives. He further stated that exaggerated claims might cast reflection upon the entire field of competition. On cross-examination he was asked, "Has any advertising of Kruschen Salts, to your definite and certain knowledge, resulted in any injury to the sale of your product, Sal Hepatica?", to which he replied, "I could never prove that it had." However, on redirect examination, he testified that regardless of his inability

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to point out concrete instances his "opinion still stands." His company does not advertise Sal Hepatica for weight reduction.

Dr. H. Sidney Newcomer, connected with E. R. Squibb & Sons, manufacturers of and dealers in proprietaries and biological preparations, including Squibb's Epsom Salts (packaged), Squibb's Laxative Salt and Squibb's Milk of Magnesia, all classified as saline laxatives, said that he assumed that Kruschen Salts was in competition with all saline laxatives including those of his company. He was asked the following question:

What would be your opinion, Doctor, as to the effect of misrepresentation of a saline laxative as a treatment for obesity or excess fat, on the sale of other saline laxatives which were not so represented?

To which he replied:

We feel that there is only a certain business in this sort of product to be obtained, and that we could obtain a larger business, if we could use more startling claims.

He was further asked:

Would the effect of more startling claims, as you term it, be to increase the sale of the saline laxative so advertised at the expense of others, in your opinion?

To which he replied:

Yes, I think that is true. It is a matter of opinion.

Dr. Newcomer testified that his company did not advertise any of its saline laxatives as a treatment for obesity or excess fat. On cross-examination he adhered to his opinion as previously shown but said that he did not know of his own knowledge that his company's business had been injured or interfered with by the advertising of Kruschen Salts for weight reduction and obesity.

Moritz Eisner, president of Carlsbad Products Co., importers of and dealers in Carlsbad Salt and Carlsbad Water, differentiated these preparations from saline laxatives generally on the ground that these are natural products while "the others are artificial products" and, consequently, in his opinion, they are not in competition. However, he stated that both are used for the same purpose and in that sense they are in competition, namely, as a laxative. When asked to state his opinion as to the effect of misrepresentation of a saline laxative as a treatment for obesity or for the reduction of excess fat, he said he did not know. Then when asked if the tendency of such a practice would be to increase the sale of the one at the expense of the others, he replied:

I could not tell you about that. I have not bothered about anything else. I have tried to sell that Carlsbad Salts and tried to increase the sale—.

William H. Wulfleff, manager of Wyeth Chemical Co., manufacturers of and dealers in proprietary medicines, including Jad Salts, a saline laxative, testified that Kruschen Salts and Jad Salts are in competition "Just as a saline laxative." On cross-examination he replied in the negative to the following question:

Insofar as Kruschen Salts is advertised nationally to the public as a treatment for obesity and weight reduction, are Kruschen and Jad Salts in competition?

However, on re-direct examination, when asked if such was a misrepresentation and the product involved was "merely a saline laxative", whether it would still be "in competition with all other saline laxatives", he replied:

If it is a saline product, advertised as such, it is in competition.

The representation that Kruschen Salts is a treatment for obesity and that it will reduce excess fat, taken in connection with the fact that Kruschen Salts is a saline laxative and is designated as such by respondent and is advertised as having the therapeutic functions of saline laxatives in general gives it such an additional sales appeal as not only to increase its sale at the expense of others but also has the tendency and capacity to eventually drive other saline laxatives from the market that are not so represented and thus unduly to restrain trade in the general commodity of which Kruschen Salts is a type.

In addition to the competition of Kruschen Salts with saline laxatives, said product, when advertised and offered for sale as a treatment for obesity, is in competition with bona fide preparations, adapted to and used for the reduction of excess fat, such as thyroid extract preparations, among which are Squibb's Thyroxin, Parke Davis & Co.'s Thyroid Extract, and Burroughs-Wellcome & Co.'s Thyroid Extract, as shown by the evidence. These products are kept in drug stores and are for sale to the general public on their own solicitation or on the prescription of a physician. Such competitors would likewise be injuriously affected by respondent's representations in regard to Kruschen Salts as a treatment for obesity, and such representations are unfair to such competitors as well as to the others previously mentioned, since, as heretofore shown, they are not warranted by the facts and are beyond the therapeutic effects of respondent's said product.

In the course and conduct of its said sale of Kruschen Salts, respondent has been, and is now, in competition in interstate commerce with such other dealers heretofore mentioned as well as with other individuals, firms and corporations engaged in the sale in interstate commerce of preparations similar in kind and as to pur-

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poses of use to said Kruschen Salts sold by respondent as aforesaid. The Commission further finds that respondent's said misrepresentations of its said product have the tendency and capacity to cause substantial injury to its said competitors and probably will result in such injury.

PAR. 5. The use by respondent in its advertising matter of statements which represent or imply that Kruschen Salts is a cure or remedy for obesity and that it will reduce excess fat has the tendency and capacity to mislead and deceive members of the purchasing public into the belief that such is the fact and to induce the purchase of said product as the result of such mistaken belief.

PAR. 6. The respondent herein, in soliciting the sale of Radox Bath Salts, has made use of advertisements inserted in newspapers and magazines circulated in and among the various States of the United States to members of the public which said advertisements contain statements which represent or imply that said preparation, when used in the bath, radiates great quantities of oxygen; that such radiation of oxygen produces an invigorating and energizing effect upon the body, as well as other physiological and therapeutic effects; that said product is imported from England; that it combines the properties of the world-famous spas and produces the effect of treatment at such places; and that it has medicinal and therapeutic value when used as aforesaid. Among such statements so used by respondent are the following:

Radox Bath Salts not only combines the same valuable properties of the world-famous Spas of Marienbad, Carlsbad and Vichy, but it also radiates great quantities of oxygen in your bath water—and everyone knows what wonderful effects oxygen has on the system? Never before have you ever felt so refreshed and soothed, your entire system is stimulated to a new life and activity.

Right from England.

PAR. 7. Radox Bath Salts, when used in the bath, produces no therapeutic effects upon the body. This was the substance of the testimony given by the Commission's medical witnesses. No testimony was given to the contrary by respondent's witnesses. Said preparation, when used in the bath, releases a small amount of oxygen and such release has no therapeutic effect upon the body. There is no warrant for the representation that said preparation radiates *great quantities* of oxygen in the bath water. Radox Bath Salts do not combine the properties of the world-famous spas, as represented, nor does its use at home produce the effects of treatment at such places. Said preparation is not imported from England but is prepared and packaged in this country as testified to by the president of respondent company. The representation that one's "entire

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system is stimulated to a new life and activity" by the use of said preparation is unwarranted.

PAR. 8. The use by respondent in its advertising matter of statements which represent or imply that Radox Bath Salts, when used in the bath, radiates great quantities of oxygen; that such radiation of oxygen produces an invigorating and energizing effect upon the body, as well as other physiological and therapeutic effects; that the preparation is imported from England; that it combines the properties of the world-famous spas and produces the effects of treatment at such places; and that it has therapeutic value when used as aforesaid, has the tendency and capacity to mislead and deceive members of the purchasing public into the belief that such are the facts and to induce the purchase of said product as the result of such mistaken beliefs.

PAR. 9. In the course and conduct of its said business, in the advertising, sale and distribution of said Radox Bath Salts, respondent has been and is now in competition with other individuals, firms, and corporations engaged in the sale in interstate commerce of preparations similar in kind and as to purposes of use to said Radox Bath Salts sold by respondent as aforesaid.

PAR. 10. Said competitors of respondent in the sale of its said products have caused and do now cause their said products when sold by them to be transported from various States of the United States to, into and through States of the United States other than the State of the origin of the shipment thereof.

PAR. 11. There are among the competitors of respondent in the sale of said products those who in no wise misrepresent the qualities, uses, effects, properties or origin of said competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of said competitors.

CONCLUSION

The practices 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 commerce and are in 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

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, E. Griffiths Hughes, Inc., its officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of "Kruschen Salts" and "Radox Bath Salts", or of said preparations under any other name or names, cease and desist from representing directly or indirectly:

(1) That said "Kruschen Salts" constitutes a cure or remedy for obesity or that it will of itself reduce excess fat.

(2) That said "Radox Bath Salts" has therapeutic value when used in the bath; that it releases great quantities of oxygen when so used; that its use at home combines the properties of world famous spas or produces the effects of treatment at such places; that it stimulates or energizes the body; or that it is imported from England.

It is further ordered, That such 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

GEORGE L. WALKER, DOING BUSINESS UNDER THE
NAME AND STYLE OF WALKER MEDICINE 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 2059. Complaint, July 11, 1932—Decision, July 18, 1933

Where an individual engaged in the compounding, preparation, and sale of proprietary or so-called patent medicines,

- (a) Included in designation of one of said preparations, the words "Indian health tonic", and represented said preparation as "the unfailing remedy for laziness and a drowsy, tired, sleepy feeling", and as relieving "weakness and tired feeling in one day", facts being preparation in question was not a general health restorative and use of the word "health" without proper limitations, in the name of the medicine, or otherwise in connection therewith, was unwarranted, and said medicine did not constitute a remedy for laziness and a sleepy feeling, unless due to constipation, and would not relieve weakness and a tired feeling, unless caused by anemia, and then only to a slight extent;
- (b) Represented said preparation as one for liver, kidneys, and blood, relieving bladder and kidney trouble, and as one which relieved in one day a bad cold or cough, grippe, or fever, facts being said medicine had no specific effect on the liver or any particular effect on the kidneys, and no therapeutic effect on any disease of the blood, except, possibly, in cases of anemia, would not relieve bladder trouble, and did not constitute an effective treatment for colds or grippe, nor a treatment for fevers generally, nor an effective one for ordinary fever and one which would relieve fever in one day; and
- (c) Represented said preparation as one which relieved pain in the neck, side, shoulder, back, or hips in one day, and one which relieved rheumatism, giving quick relief from pain, and also female diseases and women's troubles, facts being it would not relieve pain in the neck, etc., and was not generally beneficial in the treatment of rheumatism, other than as a laxative or purgative where the condition was connected in some way with constipation, and would not give quick relief from pain in such cases and had no effect in female diseases and women's troubles and would not be beneficial in treatment thereof unless in cases of constipation;

With tendency and capacity, through said exaggerated, misleading, and unwarranted representations which passed beyond the medicinal value of the preparation and did not truthfully and accurately state the therapeutic effect thereof, to confuse, mislead and deceive the general public into believing that said medicine had general curative properties in restoring health, without regard to the particular ailment, and constituted a remedy for, or would give relief in, the diseases and ailments named, or constituted such remedy or relief generally, without qualification or limitation, and to induce the purchase and use of such medicine because of such erroneous beliefs thereby caused, and divert trade to said individual

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from competitors engaged in the sale of products similar in kind and purposes of use, to aforesaid medicine, and in sale of products adapted to and used in the treatment of aforesaid diseases and ailments, and with the effect of so diverting business to said individual from competitors, including those who in nowise misrepresent the therapeutic uses and effects of the medicines dealt in by them, to their substantial injury:

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

Mr. Harry D. Michael 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 George L. Walker, an individual doing business as Walker Medicine Co., engaged for ten years or more last past in the compounding and preparation of proprietary or so-called "patent" medicines, including one known and described as "Walker's Old Indian Health Tonic", and in the sale thereof to purchasers in the various States of the United States, and with principal office and place of business in Atlanta, Ga., with naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling as to results or quality 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, in soliciting the sale of and in selling the said "Walker's Old Indian Health Tonic" makes statements and representations through printed coupons or circulars distributed in the different States, and the labels on the containers thereof, as to the therapeutic value or effect of said medicine, many of which are misleading and deceptive in that they either greatly exaggerate or do not truthfully and accurately state the therapeutic value thereof, said statements and representations holding out the same as a cure or treatment for liver, kidneys, blood, drowsy, tired feeling, cold, etc.¹

Facts are, as alleged, that said medicine is not a remedy for the ailments set forth in respondents' circulars and labels, nor does its therapeutic value warrant statements or representations that it will

¹ Statements, among others, made in the coupons and circulars, as alleged in the complaint, are set forth in the findings, *infra* at p. 19.

Statements, among others, made on the labels, as alleged in complaint, included the following:

"Walker's Old Indian Health Tonic."

"The Unfailing Remedy for Laziness and a Drowsy, Tired, Sleepy Feeling."

"Relieves Indigestion, . . . Dizziness, Sick Headache, Numbness or Chills, Kidney or Bladder Troubles, Piles, Jaundice, . . . Weakness, Tired Feeling."

"Stimulates and Purifies the Blood."

give relief therein and such therapeutic value is not such as to warrant use of word "Health" in the name of said medicine since it is not a general health restorative.

Said representations, as charged, have the capacity and tendency to confuse, mislead, and deceive members of the public into believing said medicine has general curative properties in restoring health without regard to the particular ailment, and constitutes a remedy for those enumerated, or will give relief therein, and to induce purchase and use of said medicine in such erroneous belief, and to divert trade to respondent from competitors engaged in sale in interstate commerce of similar preparations; 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 its complaint upon the respondent, George L. Walker, doing business under the name and style of Walker Medicine Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing upon the record and brief of the attorney for the Commission, respondent having failed to file a brief herein, although opportunity was given therefor, and the Commission, having duly considered the record and being fully advised in the premises, makes this its finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, George L. Walker, is the sole owner and manager of the business conducted by him under the name Walker Medicine Co., which said business has been owned and conducted by respondent for more than ten years last past with his principal place of business in the city of Atlanta in the State of Georgia. Said business consists of the compounding, preparation,

and sale of proprietary or so-called "patent" medicines. One of said medicines is known and prescribed as "Walker's Old Indian Health Tonic" which is and has been sold to members of the public and to retail dealers for ultimate resale to members of the public, in various States of the United States other than the State of Georgia, and said respondent causes and has caused said product when so sold to be transported in interstate commerce from his said place of business in Georgia to, into, and through States of the United States other than the State of Georgia to members of the public and retail dealers to whom said product is and has been sold.

During said time other individuals, firms, and corporations are and have been engaged in the manufacture and sale of proprietary medicines similar in kind and as to purposes of use to that manufactured and sold by respondent as aforesaid. Also, during said time other individuals, firms, and corporations are and have been engaged in the manufacture and sale of proprietary medicines adapted to and used in the treatment of the respective diseases and bodily conditions for which the respondent herein advertises and recommends his said medicine. Said other individuals, firms, and corporations have caused and do now cause their said products when sold by them to be transported in interstate commerce from their several places of business in various States of the United States to, into, and through States other than the State of origin of the shipment thereof. Respondent herein has been during said time in competition in interstate commerce in the sale of his said product with the several products of such other individuals, firms, and corporations.

PAR. 2. Respondent herein, during said time, in soliciting the sale of and in selling said "Walker's Old Indian Health Tonic", makes use of and has made use of certain printed coupons or circulars which he causes to be transported from his place of business in Georgia to places in other States where said medicine is offered for sale and sold and where said coupons or circulars are distributed to and among the purchasing public. Said coupons or circulars have imprinted thereon various statements and representations as to the therapeutic value or effect of said medicine, among which are the following:

Walker's Old Indian Health Tonic.

For liver, kidneys, blood.

The unfailing remedy for laziness and a drowsy, tired, sleepy feeling.

Relieves a bad cold or cough in one day.

Relieves la grippe in one day.

Relieves fever in one day.

Relieves weakness and tired feeling in one day.

Relieves pain in the neck, side, shoulder, back or hips in one day.
 Relieves bladder and kidney trouble.
 Relieves rheumatism, giving quick relief from pain.
 Relieves female diseases and women's troubles.

PAR. 3. Respondent's said medicine is composed of the following ingredients in approximately the proportions indicated below:

Magnesium sulphate.....	16.68	grams per 100 cc.
Ferric Chloride.....	.78	grams per 100 cc.
Quinine sulphate.....	.062	grams per 100 cc.

A very small amount of aromatic sulphuric acid.

Said formula was obtained by an analysis of a bottle of respondent's medicine. An analysis of a second sample showed only slight variations in the quantitative analysis. Questions asked Commission's medical witnesses were based on the analyses of both samples. Two such medical witnesses gave opinions as to the therapeutic uses and effects of said medicine.

On behalf of respondent no quantitative analysis was given. Respondent testified that the chemist who testified on behalf of the Commission failed to find the presence of citric acid in the medicine and that quantitatively the analysis is incorrect. However, citric acid has no therapeutic effect, as admitted by respondent's medical witnesses. Respondent used two medical witnesses, one of whom was his son. The questions to these witnesses were based on an assumed qualitative analysis only, namely, "sulphate of magnesia, quinine, aromatic sulphuric acid, citric acid, and ferric chloride".

There is little, if any conflict between the testimony given by the medical witnesses for the Commission and that given by those for the respondent in regard to the therapeutic uses and effects of respondent's said medicine and the individual ingredients thereof. In conformity to such testimony, the Commission finds that said "Walker's Old Indian Health Tonic" is not a general health restorative and that the use of the word "health" without proper limitations in the name of said medicine or otherwise in connection therewith is unwarranted. The Commission further finds that said medicine has no specific effect on the liver; that it has no particular effect on the kidneys; that it has no therapeutic effect on any disease of the blood except that it might be of some benefit in cases of simple anemia; that it is not a remedy for laziness and a drowsy, tired, sleepy feeling, unless such conditions are due to constipation; that it is not an effective treatment for colds or coughs or la grippe; that it does not constitute a treatment for fevers generally, is not an effective treatment for ordinary fever and would not relieve a fever in one day; that it would not relieve weakness and tired feeling unless such condition is caused by anemia, and then only to a slight extent;

that it will not relieve pain in the neck, side, shoulder, back or hips; that it will not relieve bladder trouble; that it is not generally beneficial in the treatment of rheumatism, except to act as a laxative or purgative where the condition is connected in some way with constipation, and will not give quick relief from pain in such cases; and that it has no effect in female diseases and women's troubles and would not be beneficial in such treatment unless the patient is constipated.

The Commission therefore finds that said representations of respondent in regard to the therapeutic effects of said medicine are exaggerated, misleading, unwarranted in fact, beyond the medicinal value of the same, and that they do not truthfully and accurately state the therapeutic effect thereof.

PAR. 4. The said representations of respondent as to the therapeutic value and effects of said medicine have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said medicine has general curative properties in restoring health, without regard to the particular ailment, and that it is a remedy for, or will give relief in, the diseases and ailments named therein, or is such a remedy or will give such relief generally without qualification or limitation. Said representations of respondent have the tendency and capacity to induce members of the public to purchase and use said medicine because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of products similar in kind and as to purposes of use to that of respondent and those adapted to and used in the treatment of said respective diseases and ailments.

PAR. 5. There are among the competitors of respondent in the sale of said medicine those who in no wise misrepresent the therapeutic uses and effects of their said medicines, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors to their substantial injury.

CONCLUSION

The practices 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 commerce and are in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, George L. Walker, his agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of "Walker's Old Indian Health Tonic", or of said preparation under any other name or names, cease and desist from using the word "health" in the name of said product and from representing directly or indirectly:

(1) That said medicine is a remedy or cure for or relieves diseases or disorders of the liver, kidneys, or bladder, or that it is a remedy or cure for or relieves female diseases, women's troubles, pain in the neck, side, shoulders, back, or hips.

(2) That said medicine is a remedy or cure for diseases of the blood or that it will relieve the same unless such representation is limited to simple anemia.

(3) That said medicine is a remedy or cure for laziness and a drowsy, tired, sleepy feeling; or that it will relieve the same unless such representation is limited to such conditions resulting from constipation.

(4) That said medicine is a remedy or cure for weakness and a tired feeling resulting therefrom; or that it will relieve the same unless such representation is limited to conditions due to simple anemia.

(5) That said medicine is a remedy or cure for colds, coughs or la grippe; or that it will relieve such ailments unless such representation is limited to the effects on said ailments of relieving constipation if such condition be present.

(6) That said medicine is a cure or remedy for fever; or that it will relieve fever generally.

(7) That said medicine is a cure or remedy for rheumatism; that it gives quick relief from pain; or that it will relieve rheumatism and pain unless such representation is limited to such conditions resulting from constipation.

It is further ordered, That such respondent 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
 PITTSBURGH TILE & MANTEL CONTRACTORS'
 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 1979. Complaint, Oct. 19, 1931—Order, Aug. 11, 1933

Consent order requiring respondent association, its members and other agents, representatives, servants, and employees to cease and desist "from directly or indirectly making application of any resolution, rule, by-law, understanding, or agreement, having for its purpose or effect interference with, or restriction upon the purchase, sale or importation into the State of Pennsylvania from any other State of the United States of tiles or similar materials, including a vitreous enamel tile on a steel base heretofore designated and known as 'Porstelain', manufactured and sold in interstate commerce by the Porcelain Tile Company, and particularly from giving any further force and effect to that certain resolution adopted by respondent Pittsburgh Tile & Mantel Contractors' Association on the 9th day of July A.D. 1929, making it an offense for member concerns to deal in said product formerly known as 'Porstelain', *Provided*, That this order shall not be construed as restricting the respondent Pittsburgh Tile & Mantel Contractors' Association in determining the bona fide eligibility requirements for membership therein."

Mr. PGad B. Morehouse for the Commission.

Davies, Jones, Beebe & Busick, of Washington, D.C., and *Alter, Wright & Barron*, of Pittsburgh, Pa., 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 respondents named in the caption hereof have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Pittsburgh Tile & Mantel Contractors' Association, Certified Tile Corporation, Beachview Mantel & Tile Co., Dormont Mantel & Tile Co., Highland Mantel & Tile Co., Lincoln Mantel & Tile Co., Starr Tiling Co., and Twin City Tiling Co. are all Pennsylvania corporations having their respective places of business in Pittsburgh. Respondent Frank J. Haggerty Mantel Co. is a Pennsylvania corporation with its principal place of business at

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Homestead, Pa. Respondents David Morris, Frederick Lawrence Graf, and Fred L. Graf constitute a limited partnership formed under the laws of Pennsylvania, doing business under the style of Morris, Graf & Co., Ltd., and having their principal place of business at Wilkinsburg, Pa. Respondent Edward M. Aiken, doing business under the firm style of Aiken & Co., has his principal place of business in Pittsburgh. Respondent R. E. Logan, doing business under the style of R. E. Logan & Co., has his principal place of business in Pittsburgh. Respondents Hettie A. McNeilly, Thomas McCutcheon, James McNeilly, and Louis McNeilly are copartners doing business under the firm style of McNeilly Mantel & Tiling Co. with their principal place of business at McKeesport, Pa. Respondents Mary A. Spellman and James J. Spellman are copartners doing business under the firm style of M. J. Spellman & Co. and having their principal place of business in Pittsburgh. Respondent E. J. Hubbert does business under the firm style of Standard Mantel & Tile Co. and has his principal place of business in Pittsburgh. Respondent Pittsburgh Tile & Mantel Contractors' Association will be hereinafter referred to as the "Association". Respondents, other than the Association and Certified Tile Corporation, are members of the Association and are hereinafter referred to as "member concerns". There are other tile and mantel dealers in Allegheny County, Pa., who are, or were recently, members of the Association, but are not joined herein as respondents. They are under suspension from the Association pursuant to action taken as described in paragraph 10.

PAR. 2. The Association was formed, as a corporation not for profit, in 1904, under the name Mantel & Tile Dealers' Credit Association of Allegheny County. A change of corporate name to the present title was authorized in 1919. The Association is not engaged in the sale or purchase of any commodity. It is a trade Association. It has no capital stock. The member concerns of the Association are dealers in tile and mantel in Allegheny County, Pa. They not only sell tile and mantel and related materials, but contract with purchasers for the installation of tile and mantel. In the regular course of their business member concerns purchase the commodities in which they deal from manufacturers thereof and others located both in Pennsylvania and other States, and cause the same to be transported from the said various States to their respective places of business in the county aforesaid. Member concerns are in competition in their said described trade, both among themselves and with nonmember corporations, partnerships, and individuals engaged in the purchase, sale, and installation of mantel, tile and

similar materials. Member concerns have the major part of the tile and mantel trade in said county.

PAR. 3. The Certified Tile Corporation was formed as a corporation for profit, in 1928, with 500 shares of stock of \$100 par value each. It is engaged in buying and selling tile and mantel and related materials, purchasing the same, in the regular course of its trade, both in Pennsylvania and in other States, and causing the said materials to be transported from the various States of manufacture to the warehouses of said corporation in Pittsburgh. Sales of the materials so purchased by the Certified Tile Corporation are by it made to member concerns of the Association exclusively. The Certified Tile Corporation is in competition with other vendors of the same or similar materials in the said county who cause the materials so purchased to be transported from other States into Pennsylvania for resale to member concerns and to others competing with member concerns, as in paragraph 2 hereof alleged. The member concerns of the Association are subscribers to the stock of the Certified Tile Corporation. The said stock and certificates thereof are held by the Association in escrow as partial security for the adherence of member concerns to the policies of the Association hereinafter set forth. The Association controls the Certified Tile Corporation. The president, treasurer and secretary of the Association are respectively the president, treasurer and secretary of the Certified Tile Corporation. Suspension from the Association is deemed by the respondents to work a forfeiture of the stock in the Certified Tile Corporation, owned by any member, during the period of any member's suspension.

PAR. 4. The avowed purposes of the Association as set forth in article II of its charter are as follows:

That the purpose for which the corporation is formed is the encouragement and protection of trade and commerce among those engaged in the business of dealing in mantels and tile in the County of Allegheny, in said Commonwealth of Pennsylvania, by inculcating among them just and equitable principles; by establishing and maintaining uniformity in commercial usages; by acquiring, preserving, and disseminating valuable business information; by avoiding and adjusting, as far as practicable, the controversies and misunderstandings which are apt to arise between individuals engaged in trade when they have no acknowledged rules to guide them; and by these means, to attain to the end that membership in this corporation may be an assurance to the public of skill, honorable reputation and probity.

PAR. 5. The member concerns have mutually bound themselves to follow a uniform and concerted course of action on all matters, both such as may be deemed to be within the purview of the charter provision of the Association set forth in paragraph 4 hereof, and on any

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other rule of action which the Association may adopt, subject to penalties, by the express terms of article VI, section 3, of the Association's bylaws, in manner following:

The members of this corporation shall be bound to abide by the decision of the corporate body in all matters coming within the purview of the second article of the charter of incorporation, and of the general policy of the corporation adopted pursuant to said second article, and the violation or departure from, or willful disregard of either the general rules laid down by the corporation in furtherance of the purpose of its creation, or of any particular rule of action adopted and laid down by the corporation in any given case, shall upon conviction by the corporation, subject the party so violating, departing from or disregarding the rulings and general policy of the corporation, to the payment of a fine in such sum as the corporation may, by resolution, fix.

In case of the nonpayment of any fine imposed upon any member concern, it is provided by article VIII, section 2, of the bylaws, that the delinquent member shall be suspended from membership in the Association.

PAR. 6. All concerns joining the Association after the formation thereof, have agreed, by the express terms of article IV, section 4, of the bylaws, to abide by the policy adopted by the Association, as to the conduct of the business in which they are engaged. Applicant concerns, under article VI, section 7, of the bylaws, do not become members in good standing in the Association until they have caused signature to be duly authorized and made of the charter and bylaws of the Association. The duty of reporting violations of the Association's policies, committed by member concerns, is expressly assumed by all members under the terms of article VIII, section 1, of the bylaws.

PAR. 7. It is also agreed by the member concerns of the Association, by the express terms of article VI, section 1, of the bylaws, that no member shall resign from the Association so long as it is engaged in the mantel business, the tile business, or both.

PAR. 8. Membership in the Association confers upon member concerns great advantages not enjoyed by nonmember competitors. Among the said advantages are the following:

- (a) The exchange of trade and credit information with other members;
- (b) Credit prestige in the trade;
- (c) Prestige in the trade as to the quality of materials and workmanship;
- (d) The certification or guarantee of materials and workmanship by the Certified Tile Corporation, which are only available to member concerns;
- (e) The privilege of buying certain materials which the Certified Tile Corporation has secured the exclusive right to sell in the aforesaid county and which it sells to member concerns only;
- (f) The privilege of buying certain materials through the Certified Tile Corporation at discounts greater than those obtainable by nonmember competing mantel and tile dealers;

(g) The right to participate in the dividends of the Certified Tile Corporation;

(h) The good will and cooperation of other member concerns; and

(i) The rights and privileges in general of membership in both the Association and the Certified Tile Corporation, and of stock ownership in the latter corporation.

PAR. 9. In 1929, certain of the member concerns of the Association, not parties respondent herein, made contracts for purchasing and importing into said Allegheny County, Pa., from the State of Missouri, that certain enameled metal product known as "porstelain", which product said members were then installing and selling in competition with the materials installed and sold by other member concerns and by nonmembers engaged in said county in the business described in paragraph 2 hereof.

PAR. 10. On July 9, 1929, a resolution was adopted by the Association, wherein it was declared that dealing in said "porstelain" was an offense within the provisions of the bylaws set forth in paragraph 5 hereof, and further, it was therein declared that member concerns continuing thereafter to deal in "porstelain" would become subject to the said bylaw provisions. Thereafter, the said member concerns which had dealt in said "porstelain", as in paragraph 9 herein set forth, having failed or omitted to discontinue their trade therein, were by this Association fined in substantial sums, were suspended from membership in this Association and were excluded from the advantages of such membership set forth in paragraph 8 hereof; and they are still deprived of said membership and its said advantages.

PAR. 11. Among the purposes of the understandings and activities set forth herein in paragraphs 4 to 10, inclusive, are the following:

(a) To prevent, insofar as possible, the purchase and importation into Pennsylvania, and the sale of said "porstelain", and completely to prohibit such purchase, importation and sale by member concerns of the Association;

(b) To coerce certain member concerns to break their contracts, previously made, for the said purchase, importation and sale of said "porstelain";

(c) To diminish the confidence of the trade and of consumers in said "porstelain" and to prevent the establishment of such confidence;

(d) To damage and, insofar as possible, to destroy the trade of both the producers and the dealers in the said "porstelain" from other States into Pennsylvania and in that State;

PAR. 12. The effect of the understandings and the activities of respondents as alleged above in paragraphs 4 to 10, inclusive, has been and is as follows:

(a) To diminish and restrict the purchase, the importation from other States into Allegheny County, Pa., and the sales in said county, of said "porstelain";

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(b) To close to the producers and shippers of said "porstelain" numerous outlets for interstate trade therein;

(c) To bring to bear the coercive influences of ostracism, trade isolation and the loss of the business and monetary advantages, hereinabove in paragraph 8 set forth, upon member concerns neglecting or refusing to adhere to the policies and agreements of the Association as respects said "porstelain";

(d) To impress upon member concerns against which action, as described in paragraph 10, has not been taken by the Association, that they cannot deal in said "porstelain" without incurring serious penalties;

(e) To deprive dealers in tile and mantel of the free and unobstructed conduct and control of their respective businesses in such manner as the managers of each concern may deem fit, and to intimidate and prevent dealers from trading in said "porstelain";

(f) To deprive the buying public of Allegheny County, Pa., of the benefit of the free and unobstructed competition between said "porstelain" and other materials sold and used for the same or similar purposes;

(g) To substantially lessen, hinder, restrict and restrain interstate trade in said "porstelain", with resulting benefits to the trade of manufacturers of and dealers in competing materials;

(h) To conduce to a monopoly in Allegheny County, Pa., in favor of the materials approved by the Association.

PAR. 13. The practices and methods of competition hereinabove described have the capacity and a dangerous tendency to substantially lessen competition in interstate trade in tile and mantel and allied materials and to create a monopoly in favor of certain materials approved by the respondents, in an important market for these materials, and said practices and methods have actually lessened such competition in the said market. The said practices and methods of competition of respondents are against the public interest and constitute unfair methods of competition in commerce between the States, in violation of Section 5 of the aforesaid Act of Congress known as the Federal Trade Commission Act.

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 and each of 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, and it having been stipulated and agreed by and between counsel for respondents and counsel for the Commission that the names and designations of certain of the respondents as they appear in the caption and body of the complaint hereinbefore entered and served upon all of the following respondents, may be considered by the Commission as having been amended to conform to the proper names and designations of said respondents as they hereinafter appear.

It is now ordered, That said stipulation and agreement be and the same is hereby approved, that the complaint be so amended, and that the respondents, Pittsburgh Tile & Mantel Contractors' Association, Certified Tile Corporation, Beechview Mantel & Tile Co., Dormont Mantel & Tile Co., Highland Mantel & Tile Co., Lincoln Mantel & Tile Co., Starr Tiling Co., all corporations formed under the laws of Pennsylvania; W. P. Ramsey, doing business as Twin City Tiling Co.; David Morris, Frederick Lawrence Graf, and Fred L. Graf, doing business as a Pennsylvania limited partnership association under the style of Morris, Graf & Co., Ltd.; Edward M. Aiken, doing business under the style of Aiken & Co.; R. E. Logan, doing business under the style of R. E. Logan & Co.; James Louis McNeilly, Hattie A. McNeilly, and Thomas McCutcheon, copartners, doing business under the style of McNeilly Mantel & Tile Co.; Mary A. Spellman and James J. Spellman, copartners doing business under the style of M. J. Spellman & Co.; and E. J. Huber doing business under the style of Standard Mantel & Tile Co., and the agents, representatives, servants, and employees of each of them cease and desist from directly or indirectly making application of any resolution, rule, bylaw, understanding or agreement, having for its purpose or effect interference with, or restriction upon the purchase, sale, or importation into the State of Pennsylvania from any other State of the United States of tiles or similar materials, including a vitreous enamel tile on a steel base heretofore designated and known as "Porstelain" manufactured and sold in interstate commerce by the Porcelain Tile Co., and particularly from giving any further force and effect to that certain resolution adopted by respondent Pittsburgh Tile and Mantel Contractors' Association on the 9th day of July A.D. 1929, making it an offense for member concerns to deal in said product formerly known as "Porstelain", *Provided*, That this order shall not be construed as restricting the respondent Pittsburgh Tile & Mantel Contractors' Association in determining the bona fide eligibility requirements for membership therein.

It is further ordered, That the respondents and each of them shall within 60 days after 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 hereinabove set forth.

IN THE MATTER OF
MAISEL TRADING POST, 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 2037. Complaint, May 17, 1932—Decision, Aug. 21, 1933

Where the terms "Indian" or "Indian made", generally coupled with the word "jewelry", or with the word or words "bracelet", "ring", "concha belt", or other words descriptive of various articles of jewelry, had long come to be known by the public as defining silver jewelry products made by Indians of the Southwest, by hand processes exclusively, and to be purchased by the public as such, and jewelry sold to the public under said terms had acquired a reputation for beauty, artistic character, individuality, and wearing qualities, and enjoyed a wide, popular demand and distribution, and the Indians and Indian traders concerned had a valuable goodwill in said terms as applied to products hand-hammered and fashioned exclusively by hand tools and processes (enhanced by the widespread sentiment in favor of the Indians, and the products of their arts and handicrafts); and thereafter a corporation engaged in the production of silver jewelry by machinery, with Indian employees, white foreman, officers and sales forces, and in the sale of said jewelry in competition both with Indian traders and others selling jewelry made by Indian silversmiths, and with those engaged in the sale of machine made silver jewelry, in styles similar to those used by the Indians, under such designations as "Indian design" jewelry,

Designated its said products as "Indian" or "Indian made" and sold the same to dealer customers throughout the country as "Indian jewelry" and "Indian made jewelry", and so labeled, and described the same in catalogs and advertising literature furnished to its said customers, with the effect that some were misled and deceived into buying said much more cheaply made products as and for those made exclusively by hand as aforesaid, there was put into the hands of others, not misled, the means whereby the public might be induced to buy its said machine-made products as and for the much more costly and artistic products made by hand, and hand tool processes, exclusively, by Indians, its own customers were aided in substantial numbers in selling its said products to numbers asking for jewelry under said terms without realizing that they were made in large part, or in any part, by machinery, and the public was thereby caused to purchase its said less costly and lower priced jewelry as and for that hand-hammered, fashioned, and ornamented by Indians by the use of hand tools and processes, exclusively, and was induced in a large proportion of cases to purchase said articles which it otherwise would not have purchased; and

With the result that it was thereby enabled to undersell competitors selling true Indian hand-made jewelry, retailers were induced to stock and sell its said machine-made products by reason of the great advantage thus

enjoyed over retailers stocking and selling the much more costly Indian jewelry, made by hand, exclusively, and with the tendency thereby to eliminate true hand-made Indian jewelry from many outlets of trade, to the detriment of the manufacturers and vendors of such jewelry, and with great resulting hardship to Indian silversmiths throughout the Southwest, great numbers of whom could not dispose of the hand-made products of their skill, and the depression in the Indian jewelry line was thereby increased, and with the further result that competitors selling machine-made jewelry, in Indian hand-made styles, as "Indian design", were injured due to retailer's trade advantage in stocking and selling machine-made articles sold to and by them under terms understood by the public as designating the more costly, artistic, durable and prized hand-made products, as above set forth:

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. John S. Simms, of Albuquerque, N.Mex., 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 Mexico corporation engaged in the manufacture and sale of silver jewelry, and with factory and principal place of business at Albuquerque, N.Mex., with misrepresenting nature, or nature of manufacture of product dealt in, and advertising falsely or misleading 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 manufacture of such jewelry by machinery, by Indian workmen, supervised by white foremen and operating modern equipment, including rollers, dies, punching machine, acetylene torches, lathes and stamping machinery, represents its said jewelry products as "Indian Made" and as made by the "Navajos", and (in certain advertising) as made by the Indians by the primitive methods of hand production, in soliciting the purchase of its said product by means of oral representations and by advertisements, circulars, leaflets, catalogs, and other ways; notwithstanding fact that said products are machine made, of lower cost, and less beautiful than the Indian hand-made products with their popularity and reputation for beauty and wearing qualities which the consuming public many years ago came to associate, and still associates, with the term "Indian" and "Navajo"

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as applied to silver jewelry¹ and said various machine made articles do not, as do those made by the Indians, differ, one from another, but are uniform within the respective types.

Such acts and things, done by respondent, as alleged, "have the capacity and tendency to mislead and deceive and do actually 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 they have the tendency and capacity to induce and have induced the purchase of respondent's jewelry in reliance upon such belief; and thereby have diverted and now divert trade from and otherwise injure competitors of respondent", who include in their number numerous "manufacturers, dealers and distributors of jewelry who market such products under representations such as not to be misleading or deceptive to the purchasing and consuming public."

Use by respondent, as charged, of such misleading and deceptive terms and statements 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 fair and legitimate competition afforded by hand-made Indian jewelry in interstate trade", 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, the Federal Trade Commission issued and served a complaint upon the respondent, Maisel Trading Post, Inc., charging it with the use of unfair methods of competition in commerce in

¹ As alleged in the complaint "there are in the southwest portion of the United States tribes of Indians, including the Navajo Indians in New Mexico and Arizona who for many years have made, and still make, jewelry from silver by hand processes; and the said Indians have through several generations developed great skill and artistic ability in the said craft. The said craft has acquired certain tribal and religious significance and it is part of the practice and tradition therein that no articles so produced by Indian hand labor are identical, one with another. The said 'Indian' or 'Navajo' jewelry has acquired a reputation for beauty and wearing qualities and a wide popularity and distribution, and said Indians have a valuable good will in the terms 'Indian jewelry' and 'Navajo jewelry' as applied to said hand made products. The consuming public many years ago came to associate, and still associates, with the said terms 'Indian' and 'Navajo', as applied to silver jewelry, the significance of hand-made products fashioned and produced by Indian craftsmen."

violation of the provisions of said act. Respondent appeared and filed its answer. Thereafter hearings were held at Gallup, Santa Fe, and Albuquerque, N.Mex., and evidence, both oral and documentary, in support of the complaint and in defense, was introduced before a trial examiner duly appointed by the Commission. The proceeding was submitted on briefs and oral argument and has been brought on for final determination.

Now, therefore, the Commission, having considered the pleadings, the oral and written argument and the record herein and, being duly advised in the premises, makes this its report stating its findings as to the facts and the conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of New Mexico with its plant and principal place of business at Albuquerque in said State. About 1927 a business for the production and sale of silver jewelry was established by one Maurice Maisel, now president of respondent, and this respondent was incorporated and took over the said business about 1930. Respondent has since conducted the said business.

PAR. 2. Respondent, in the regular course of said business, sends sales agents, and advertising material from its said principal place of business in New Mexico into other States and causes its said jewelry when sold to be shipped from its said place of business in the State of New Mexico to purchasers thereof located in numerous States of the United States.

PAR. 3. In the regular course and conduct of its business respondent has uniformly been and still is, in constant competition with other corporations and with individuals and partnerships which are engaged in the sale and distribution of silver jewelry products in trade among the States. Certain of respondent's said competitors are so-called Indian traders and others who buy jewelry made by Indian silversmiths or employ Indian silversmiths and sell the products of said Indians in various States of the country. Both respondent and the said described competitors designate their merchandise as "Indian" or "Indian made" which merchandise is produced by Indians. Others of respondent's said competitors are engaged in the manufacture and sale of silver jewelry not made by Indians, but made in styles similar to those employed by Indians, and these competitors designate their products as "Indian design" jewelry. Respondent and both groups of competitors seek to sell their products to the same class of customers, to wit, curio dealers throughout the United States.

PAR. 4. The Indians of the southwestern section of the United States were not workers in silver before the Spanish conquest. The making of silver jewelry was early taught to them by the Spaniards. For generations many members of the Navajo tribe and of the Zuni and other Pueblo tribes of New Mexico and Arizona have made silver jewelry exclusively by hand tools and processes. These Indians have developed great skill and artistic ability in this craft and their products are widely recognized both by experts and the public as a form of genuine art. The Indians in earlier times received the silver in the form of coins, generally Mexican pesos. They now usually receive it in the form of "slugs" of the standard fineness of "coin silver". After applying heat the Indian silversmith beats the softened silver into the desired form, whether a bracelet, ring, concha for a belt, pendant or other article by hand-hammering and fashions and decorates it by hand tools and processes. The article is often decorated in part by precious stones of which the turquoise is by far the most commonly used. The turquoises are received from whites in finished form ready for mounting.

Many Indian silversmiths use modern hand tools and equipment made by whites including acetylene torches, American or French draw plates for drawing wire, dies, and molds. Others use more primitive tools, dies, molds, and draw plates, largely made by themselves. Machinery is not in use by Indian silversmiths except that the stress of competition from producers of jewelry largely made by machinery, intensified by respondent's misleading trade terms, as hereinbelow in paragraph 10 described, has resulted in the introduction by a very few Indians of machine rollers to replace hand-hammering. Almost all Indian silversmiths working outside of respondent's plant, however, maintain the exclusively hand methods of production. After the article of jewelry is completely fashioned and decorated there is a nonlustrous, white appearance which would in time be removed by wear, but which until removed renders the article unattractive to the public. This is best removed by machines, buffing wheels, which are in use by many Indian silversmiths.

These wheels when legitimately used are not means of production. They are, however, sometimes used dishonestly to wear down new jewelry so as to simulate and to sell, as old, articles of jewelry, which have long been worn by Indians, and have for that reason a sentimental value and a higher price on the market as "Old Pawn". The silver jewelry now made for a nation-wide distribution has a greater variety than that formerly made for the Indians themselves. In the early days of the craft the Indians made and acquired jewelry largely for personal ornamentation and as a means

of investment of family savings. Articles once unknown to the Indian craft are now fashioned by Indian silversmiths for sale to whites, such as cigarette holders, knives, spoons and many others. The tendency of the craft is also strongly toward lighter weight articles as contrasted with the massive jewelry which the Indians formerly made for themselves and other Indians. Genuine "Old Pawn" articles are generally massive in their silver content and are purchased chiefly by connoisseurs and collectors.

PAR. 5. Respondent employs in its plant only Indians as makers of its jewelry products. The number so employed by respondent has varied from about 12 to about 60. They are supervised by a white foreman. The officers and sales forces of respondent are whites.

Respondent buys its silver in the form of sheets of various gauges and rolls the same to the required thickness by machine rollers in lieu of hand-hammering. The sheet is then stamped out by machinery as nearly in the required shape as practicable and is then smoothed by hand-filing processes. If ornamented by turquoises the latter are mounted by hand. If the ornamentation is wholly or in part by design to be superimposed upon, or cut completely through the article of jewelry, this ornamentation is produced by machine. If the ornamentation is by the use of dies, the dies may be inserted in a machine and the ornamentation made mechanically or, in other cases, such ornamentation is added by the use of hammer upon hand-manipulated dies.

Conchas for belts are made by machinery. There are processes of annealing, bending, punching and soldering, which are necessarily done by hand even in respondent's plant. Among types of machines in respondent's plant used for making jewelry are the following: Hand and power drop press, double-gear power rolling mill, foot press, screw press, double bench crank machine, flexible shaft and motor outfit and draw bench crank machine, together with other machines for making tools to be used in silver jewelry making. The use of machinery enables respondent to turn out many times the output per workman, which is possible under exclusively hand methods. The greatest curtailment of time is in the substitution of machine rolling for hand-hammering. The cost of production of respondent's products is far less than that of Indian hand-made jewelry made in like designs and weight of material.

PAR. 6. The individuality, the artistic quality and the beauty of the article is lessened to the extent that machine work replaces hand work in any process of production of silver jewelry. The fashioning of an article of jewelry by the hand application of a hammer is a process of creation into which the silversmith puts his individual

powers as a craftsman and artist. The substitution of mechanical rollers, which reduce the silver to a sheet of precisely the thickness required, diminishes greatly the quality of the product. Persons who are familiar with silver jewelry made in Indian styles can in general correctly sort the exclusively hand-made jewelry from that made with the aid of machinery, on their quality distinctions, and in particular they can distinguish jewelry which has been hand-hammered from machine rolled products. At times, however, pieces on the border line of quality or pieces especially made to disguise the method of production cannot be accurately distinguished. Hand-hammered jewelry is superior to that rolled by machinery in temper and durability.

PAR. 7. With the increase of tourist travel to the southwest and the development of the Indian curio business throughout the entire country, the public demand for Indian hand-made jewelry has gradually increased. The silver jewelry products made by Indians by exclusively hand processes have long been sold to the public as "Indian" or "Indian made", terms generally coupled with the word "jewelry" or with the word or words "bracelet", "ring", "concha belt" or others descriptive of various classes of articles. The public have long known and purchased the said exclusively hand-made jewelry produced by Indians under these terms, constantly understanding by said terms that the product has been, not merely made by Indians, but made by Indians by hand. The jewelry sold to the public under the said terms has acquired a reputation for beauty, artistic character, individuality and wearing qualities and a wide popularity, demand and distribution. The Indians and Indian traders have a valuable goodwill in the said terms as applied to products hand-hammered and fashioned exclusively by hand tools and processes. This goodwill is greatly enhanced by a widespread sentiment in favor of the Indians and the products of their arts and crafts. This public regard for articles purchased under the said described trade terms adheres to the jewelry products of Indians only so far as these products are exclusively made by hand tools and processes. The desire to purchase and retain an article of "Indian" jewelry is almost entirely destroyed if the ultimate buyer believes or learns that the Indian maker thereof employed machinery in the rolling or fashioning of the silver as a partial or entire substitute for hand-hammering and hand-ornamentation.

PAR. 8. Respondent sells its products to dealer customers throughout the country as "Indian jewelry" and "Indian made jewelry" furnishing these dealer customers with catalogs, advertising literature and labels on its jewelry bearing these terms. The said cat-

alogs, advertising literature and labels come to the attention of the ultimate buyer.

PAR. 9. One effect of respondent's trade terms, as in paragraph 8 hereinabove described, is to mislead and deceive some dealer customers, though a minority thereof, into buying respondent's products in the belief that these products are made exclusively by hand. Another effect is to put into the hands of other dealer customers, who know that respondent's products are largely made by machinery, the means whereby the public may be induced to buy, the products of respondent as and for products exclusively made by hand tools and processes by Indians. Dealer customers of respondent are thus in substantial number aided by respondent's said trade terms in selling said products, and do sell them, to numerous customers who ask for jewelry under the said mentioned terms and who do not realize that respondent's products are made in large part, or in any part, by machinery. The said use by respondent of said trade terms causes the public to purchase respondent's jewelry in the belief that said jewelry has been hand-hammered and fashioned by Indians exclusively by the use of hand tools and processes. Thereby the public is induced in a large proportion of cases to purchase articles of respondent's jewelry which, but for the use of respondent's trade terms hereinabove described, they would not purchase.

PAR. 10. The respondent, through the use of rollers and other machines, is able to produce as many times greater output than can be produced by the same number of craftsmen producing by hand tools and processes exclusively. Respondent can therefore undersell its competitors who make and market jewelry exclusively made by hand. By the use of respondent's said described misleading trade terms respondent obtains a great advantage over competitors who sell true Indian hand-made jewelry. Retailers who stock and sell respondent's products have an advantage over retailers who stock and sell Indian jewelry made exclusively by hand. The public, not realizing that respondent's jewelry is produced in large, or in any, part by machinery tend to buy the lower priced article of jewelry; hence retailers are induced to stock respondent's goods in preference to Indian jewelry made exclusively by hand tools and processes.

The tendency is to eliminate true hand-made Indian jewelry from many outlets of trade to the detriment of the manufacturers and vendors of Indian hand-made jewelry. This results in great hardship to Indian silversmiths throughout the southwest section of the United States. Of the large Navajo tribe one-tenth approximately, or 4,500 are dependent for their livelihood on the silver jewelry

craft. Of the smaller Zuni tribe one-fifth and in other tribes many are dependent upon this craft. Great numbers of Indian silver-smiths who employ exclusively hand methods of production cannot dispose of the products of their skill. This is only in part due to the economic depression which strikes especially at luxury merchandise. Other products of Indian skill equally in the luxury class have been notably less curtailed in sales than Indian jewelry. The depression in the Indian jewelry line has been increased by the trade terms of respondent.

PAR. 11. Other competitors of respondent who manufacture and sell jewelry made in general in the styles of Indian hand-made jewelry but who designate their products "Indian design" jewelry are injured by respondent's use of the above described trade terms. By their term "Indian design" jewelry these competitors at least partially place the trade and the public on notice that their products are not necessarily exclusively made by hand tools and processes. There is a trade advantage to the retailers in placing on stock an article which is sold to them, and can the better be sold by them, under trade terms which are understood by the public to describe hand-made jewelry, over placing in stock so-called "Indian design" jewelry.

CONCLUSION

Respondent's trade terms are literally true but mislead and deceive the public and divert trade from respondent's competitors to respondent.

The use of said trade terms by respondent without such explanation as will prevent the misleading and deception of the public is unfair and unlawful.

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 upon the pleadings, the evidence received, and the oral and written argument, and the Commission having made its findings as to the facts and the conclusion that respondent, Maisel Trading Post, 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 ordered, That respondent, its agents, representatives, and employees, shall cease and desist from designating, describing or offering any of its silver jewelry products, made partly by machinery, for sale in interstate commerce by label, stamp, catalog, advertisement or otherwise, as "Indian" or "Indian made", either with or without the addition of the word "jewelry" or the addition of a word, or words for the class of article, as "bracelet", "ring" "concha belt", or the like, unless the label, stamp, catalog or advertising shall clearly and expressly state, in immediate context with the said descriptive terms in conspicuous lettering at least three-quarters as high and three-quarters as wide as the lettering of said descriptive terms, either that the jewelry so designated, described or offered:

(a) has been rolled by machine, or

(b) has been pressed by machine, or

(c) has been partly ornamented by machine, or

(d) that there has been used in its production a combination of rolling, pressing and/or partial ornamentation by machine, as may have been respectively the method of the manufacture of respondent's various products so designated, described or offered for sale: *Provided, however*, That the use of hand tools or nonmechanical equipment of whatsoever kind in production, and further that the use of buffing wheels for the polishing of fully fashioned pieces of jewelry, shall not preclude the use by respondent of the terms "Indian" or "Indian made" for any hand-made product, without the making of any explanatory statement.

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

Complaint

18 F.T.C.

IN THE MATTER OF

M. B. LYTLE

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

Docket 2093. Complaint, Mar. 7, 1933—Decision, Aug. 22, 1933

Where an individual engaged in Utah in producing and marketing alfalfa seed, including a variety thereof commonly designated and known as "Grimm", and in the shipment of said seed in bags into and through various other States, to retail grain dealers, and direct to ultimate purchasers, placed upon bags of his said seed, official Utah seed certification blue tags, which he had caused to be taken and transferred from other bags of seed inspected and certified by the State Department of Agriculture, notwithstanding fact that his aforesaid bags had neither been inspected nor certified by said Department and did not contain the highest quality of certified seed obtainable, nor seed of pure "Grimm" variety as understood from extensive use of such blue tag certification; with effect of misleading prospective purchasers and purchasers into the erroneous belief that said seed was of the same purity of variety and pedigree and had been subjected to the same careful verification of origin, purity of variety, pedigree of quality, freedom from noxious weeds, and hardness as Grimm alfalfa seed of the highest quality, inspected and certified by aforesaid Department for the State of Utah, and with a tendency so to mislead, and to divert trade from competitors to himself:

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.

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 or near the town of Delta, Utah, in producing and marketing alfalfa seed, including a variety thereof commonly designated and known as "Grimm", and in shipping said seed into and through various other States, with misbranding or mislabeling as to official indorsement or sponsorship, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondents as alleged, places upon bags of his said seed, neither containing highest quality of certified seed obtainable, nor seed of pure Grimm variety, and neither inspected nor certified by the Utah De-

partment of Agriculture, official Utah seed certification blue tags¹ taken and transferred from other bags inspected and certified by said department; with effect of misleading purchasers and prospective purchasers into erroneous belief that seed in question "is of the purity of variety and pedigree and has been subjected to the same careful verification of origin, purity of variety, pedigree of quality, freedom from noxious weeds and hardness as 'Grimm' alfalfa seed of the highest quality", inspected and certified by said department, and with tendency so to mislead, and to divert trade from respondent's competitors to it; 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, M. B. Lytle, an individual, charging him with the use of unfair methods of competition in violation of the provisions of said act.

The Commission duly served said complaint upon respondent on the 11th day of March, 1933, stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed, to wit, the 14th day of April, A. D. 1933, at 2 o'clock in the afternoon at the offices of the Federal Trade Commission in the city of Washington, D.C. Respondent having failed to appear at the place and time so fixed or to answer or to show cause why an order should not be entered by the Commission, the said complaint was thereupon reissued and served again by registered mail with a new notice resetting the aforesaid hearing for the same place upon the 9th day of June, 1933, at 2 o'clock in the afternoon. At respondent's requests extensions of time having been granted up to and including the 3d day of July, 1933, within which he might file answer to the aforesaid complaint or show cause why an order should not be entered by the Commission and respondent having continued in his failure and refusal so to do, thereupon this cause came on for final disposition upon the complaint pursuant to paragraph (3) of rule III of the Rules and Regulations duly adopted for the purpose of carrying out the provisions of the aforesaid act, due notice of which was served upon respondent with the aforesaid complaint, and the

¹ Matter alleged in the complaint relating to inspection and certification in question, is set forth in paragraph 2 of the findings, *infra* at p. 42.

Commission having duly considered that respondent is in default, 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. Respondent is an individual who is now and for more than two years last past, has been engaged, at or near the town of Delta in the State of Utah, in the business of producing and marketing alfalfa seed including a variety thereof commonly designated and known as "Grimm". When sold, respondent causes the said seed to be shipped in bags from Delta, Utah, into and through various other States of the United States, both to retail grain dealers for resale and direct to the ultimate purchasers thereof.

In the course and conduct of his business as aforesaid respondent is and has been in direct and substantial competition with others engaged in the sale and distribution in interstate commerce of alfalfa seed of the variety known as "Grimm".

PAR. 2. For agricultural reasons widely known and approved, a true knowledge of the source, origin, purity of variety, pedigree of quality, freedom from noxious weeds, and hardiness is of great importance to the ultimate purchaser of alfalfa seed. Because of that considered importance, the State Department of Agriculture of Utah recognizes and regulates the inspection and certification of alfalfa seed grown within said state by inspecting the alfalfa while growing, passing upon the aforesaid factors, sealing the bags at the source, supervising the cleaning of the seed, and attaching to those bags containing the highest quality of "Grimm" alfalfa seed a blue tag containing the State's official certification as to the source, purity of variety, pedigree, origin, freedom from noxious weeds and hardiness. Through extensive use such blue tag certification has come to and does indicate to the purchaser that the bag to which it is attached contains the highest quality of certified seed obtainable, and on that account the purchaser pays a higher price than for other grades of alfalfa seed.

PAR. 3. In the course and conduct of his interstate business as aforesaid, respondent has caused to be placed upon bags of his alfalfa seed, which have not been inspected or certified to by the Utah State Department of Agriculture and which do not contain the highest quality of certified seed obtainable, and which do not contain seed of pure Grimm variety, official Utah seed certification blue tags which said respondent has caused to be taken and transferred from other bags of seed which have been inspected and certified to by the said State Department of Agriculture.

The transfer and unauthorized use of the aforesaid blue tag by respondent upon seed not officially inspected and certified to by the Utah State Department of Agriculture has a tendency to and does mislead prospective purchasers and purchasers into the erroneous belief that the said seed was of the same purity of variety and pedigree and had been subjected to the same careful verification of origin, purity of variety, pedigree of quality, freedom from noxious weeds, and hardness as Grimm alfalfa seed of the highest quality which had been inspected and certified to by the State Department of Agriculture for the State of Utah, and has a tendency to divert trade from respondent's competitors to respondent.

PAR. 4. The acts and things above alleged to have been done by respondent are to the prejudice of the public and to the competitors of respondent who are engaged in the sale and distribution in interstate commerce of alfalfa seed, and are 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having come on to be disposed of by the Federal Trade Commission upon the failure of respondent to file answer to the complaint of the Commission duly served upon him and upon said respondent's failure to show cause why an order should not be entered by the Commission requiring him to cease and desist from the violations of law as charged in said complaint, 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",

Order

18 F.T.C.

It is now ordered, That respondent, M. B. Lytle, his agents, servants or employees in connection with the sale in interstate commerce of alfalfa seed, cease and desist:

(1) From placing or causing to be placed upon the bags or sacks upon which such alfalfa seed is sold official Utah seed certification blue tags, or in any other wise representing that his said seed has been officially inspected and certified to by the Utah State Department of Agriculture, when such is not the case.

(2) From attaching to the bags or sacks in which said seed is so packed, distributed and sold, tags of the identical shade of blue, which through extensive use have come to indicate officially certified highest quality alfalfa seed of the "Grimm" variety, when such bags or sacks do not contain such quality and variety of alfalfa seed—unless and until respondent in conspicuous printing on said blue tags clearly and truly informs the purchasers and prospective purchasers of the actual varieties and qualities of the said seed therein contained.

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

Complaint

IN THE MATTER OF
 COOK PAINT & VARNISH CO. AND MARK L. JONES,
 INDIVIDUALLY

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

Docket 1959. Complaint, June 17, 1931—Decision, Sept. 23, 1933

Where a corporation engaged in the manufacture of varnish, paints, shellacs, wood-fillers and kindred products, and its salesman or agent through whom it contacted and solicited furniture manufacturing customers and prospective customers in certain States, paid and offered to pay to trusted employee foremen finishers of said manufacturing customers and prospective customers, without their knowledge or consent, substantial sums of money as a reward for recommending or procuring purchase of said corporation's products by their employers, or as an inducement for continuing so to do, or opposing purchase of competitors' product; with result that competitors unwilling to resort to such practices found it practically impossible to obtain any considerable business, trade was unfairly diverted to it, and fair competition based upon price and quality was eliminated:

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.

Littlepage & Littlepage, of Washington, D.C., for respondents, along with whom appeared *McCune, Caldwell & Downing*, of Kansas City, Mo., for Cook Paint & Varnish Co.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation, engaged in the manufacture and sale of varnish, paints, shellac, wood-fillers, and kindred products, to manufacturers of furniture and others in various States, and with principal office and place of business in Kansas City (and with a Cincinnati division or branch called Blackburn Varnish Co., which trade name it used in the sale and distribution of certain of its products in interstate commerce); and respondent individual, its sales manager or general salesman, with bribing employees of com-

petitors, in violation of the provisions of Section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent company, as charged, through respondent individual, who acted in its behalf has during several years last past offered and given to finishers, foremen, and other employees of manufacturers of furniture to whom it sells its said products, without the knowledge and consent of said manufacturers, the respective employers of said employees, substantial sums of money as inducements to influence said employers to purchase its products, to recommend such purchases to their said employers or the use of its said products, or as promised gratuities for having induced such purchases by such employers or having recommended the use of its products to them, such payments having been made by said individual in cash only, in order to conceal said transactions and the identity of the donors.

Said acts and practices, as alleged, have tended to induce and have induced the purchase of said company's products by furniture manufacturers, and have tended to divert, and have diverted trade from, and thereby injured said competitors; all to the prejudice of the public and respondent company'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 respondents, Cook Paint & Varnish Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and upon Mark L. Jones, an individual, charging them and each of 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 answers to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answers, testimony and evidence received and briefs and oral argument 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cook Paint & Varnish Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business in the city of Kansas City, State of Missouri, and with an office in the city of Cincinnati, State of Ohio. Said respondent has a division or department called Blackburn Varnish Co., which name respondent corporation uses as a trade name in the sale and distribution in interstate commerce of certain of respondent corporation's products. The said division of respondent corporation, namely, Blackburn Varnish Co., has its principal office and place of business in the city of Cincinnati, State of Ohio. Respondent, Cook Paint & Varnish Co., is now, and for several years last past, has been engaged in the manufacture of varnish, paints, shellacs, wood-fillers, and kindred products, and in the sale and distribution thereof to manufacturers of furniture and others located at places in various States of the United States. Said respondent causes said products when so sold to be transported from its places of business in the cities of Cincinnati, Ohio, and Kansas City, Mo., into and through other States of the United States to purchasers thereof located in a State or States of the United States other than the States of origin of said shipments, and in the course and conduct of its said business, respondent Cook Paint & Varnish Co. is in competition with other corporations, partnerships, firms, and individuals also engaged in the manufacture, sale, and distribution of varnish, shellacs, paints, wood-fillers, and kindred products between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business respondent Cook Paint & Varnish Co. employed respondent Mark L. Jones as its salesman or general salesman, and said Mark L. Jones was engaged, as the agent or representative of respondent Cook Paint & Varnish Co., in the sale of said company's varnishes and kindred products throughout various States of the United States, particularly in the States of Virginia and North Carolina, from the latter part of April, 1927, until the end of July, 1930.

PAR. 3. During the month of April, 1927, the respondent Cook Paint & Varnish Co. acquired the plant equipment and inventory of the Blackburn Varnish Co., a corporation then engaged in the business of manufacturing and selling varnishes and other kindred materials, with its principal place of business at Cincinnati, Ohio. Thereupon, respondent Cook Paint & Varnish Co. caused the said Blackburn Varnish Co. to be dissolved and a new corporation to be organized under the laws of the State of Ohio, which new

corporation was given the same name as that of the old corporation. All of the stock of said new corporation has since been owned by respondent Cook Paint & Varnish Co. and said new Blackburn Varnish Co. has been and is operated as a department or division of respondent Cook Paint & Varnish Co. and under the direction and control of said Cook Paint & Varnish Co officials. Prior to the acquisition by respondent Cook Paint & Varnish Co. of the property of the old Blackburn Varnish Co., one Mark L. Jones had been and was engaged as the salesman or agent or representative of said old Blackburn Varnish Co. in the sale of its varnishes, paints, and kindred products under a written contract, whereby he received certain commissions on all sales made by him.

PAR. 4. At the time that respondent Cook Paint & Varnish Co. had under consideration the acquisition of the plant equipment and inventory of the old Blackburn Varnish Co., there was outstanding against said Blackburn Varnish Co. and its agents, representatives, servants, and employees a cease and desist order issued by the Federal Trade Commission on July 19, 1926, forbidding said company and its representatives to engage in the practices commonly known as commercial bribery. An investigation had been carried on by an organization known as the Unfair Competition Bureau of the Paint, Varnish & Lacquer Industry, maintained by the members of the National Varnish Manufacturers' Association and of the Paint Manufacturers' Association of the United States, with regard to the activities of the said old Blackburn Varnish Co., particularly with respect to the practice of commercial bribery, and with especial regard to the activities of its aforesaid representative, respondent Mark L. Jones. The said Unfair Competition Bureau had been organized January 1, 1918, with headquarters in Washington, D.C., principally for the purpose of suppressing commercial bribery in the paint and varnish industry, in cooperation with the Federal Trade Commission. As a result of this investigation, the head or director of said Unfair Competition Bureau had obtained evidence showing that the said old Blackburn Varnish Co., through several of its salesmen and particularly through respondent Mark L. Jones, had been secretly paying bribes to foremen of certain furniture manufacturers in Virginia and North Carolina in violation of the outstanding cease and desist order issued against the said company by the Federal Trade Commission, and had turned said information over to the chief examiner's bureau of the Federal Trade Commission for its attention. Subsequent to this investigation and while the matter was still pending before the Federal Trade Commission, the aforesaid head of the Unfair Competition Bureau of the Paint & Varnish Industry, one M. Q. Macdonald, learned through trade papers that

respondent Cook Paint & Varnish Co. was considering the acquisition of said old Blackburn Varnish Co.

The president of respondent Cook Paint & Varnish Co. at that time was one Charles R. Cook, and he has continued as president of respondent corporation up to the present time. Said Macdonald immediately got into communication with said Cook, and went to Kansas City, Mo., in the early part of April, 1927, where, in a conference lasting several hours, he gave Cook full information about the investigation he had made into the affairs of the old Blackburn Varnish Co. and specifically informed him that the investigation showed that said Blackburn Varnish Co. had been and was engaging in the practice of commercial bribery in violation of the outstanding cease and desist order of the Federal Trade Commission, and that its activities in that regard had been and were being carried on principally through respondent Mark L. Jones. Within two weeks after this conference respondent Cook Paint & Varnish Co. acquired the plant equipment and inventory of said former Blackburn Varnish Co., took over its contract of employment with respondent Mark L. Jones and continued Mark L. Jones in its employ as salesman and representative until the end of July, 1930. At the time respondent corporation took over the contract of employment of respondent Mark L. Jones, said contract contained a provision that said Jones should not give bribes, gratuities or any form of gift or subsidy to any customer or any employee of such customers in contravention of law or of the rules established by the Federal Trade Commission, and a similar provision was placed in the subsequent contracts of employment under which Jones served respondent Cook Paint & Varnish Co. during the years 1928, 1929, and 1930. Other than including in its contracts with respondent Jones the provision that said Jones would not engage in the practice of commercial bribery, which provision had been included in the contract between Jones and the old Blackburn Varnish Co., no effort was made by respondent Cook Paint & Varnish Co., or by its officials, to see that respondent Jones did not engage in the practice of commercial bribery, despite the information conveyed by the Unfair Competition Bureau of the industry as to his previous activities in that practice.

PAR. 5. In the southern part of Virginia and in the northern part of North Carolina there are located a number of manufacturers of furniture who purchase, for use in finishing their furniture, large quantities of varnish, shellac, wood-fillers, and other kindred products. Among said furniture manufacturers were the W. M. Bassett Furniture Corporation of Martinsville, Va., and the Bassett Furniture Co. of Bassett, Va. Each of the aforesaid two furniture manu-

facturing companies maintain a department in which the furniture manufactured by them is finished by the application of varnish and other finishing materials and employ a number of workmen for that purpose. The workmen so employed are under the supervision, direction and control of foremen, called foremen finishers. It is the duty of the aforesaid foremen finishers to supervise the application of the finishing materials and to report to their employers in what manner said materials function and whether or not they are satisfactory. The foreman finisher for the W. M. Bassett Furniture Corporation of Martinsville, Va., from August, 1928, to May 1, 1930, was one A. F. Lambeth, jr., and the foreman finisher for the Bassett Furniture Co. of Bassett, Va., from about August 1, 1927, to about August 3, 1930, was one George W. Snyder.

Immediately after A. F. Lambeth, jr., entered the employment of the W. M. Bassett Furniture Corporation as foreman finisher in August, 1928, respondent Mark L. Jones called upon him at his residence in Martinsville, Va., and told said Lambeth that he, Jones, was going to sell materials at the W. M. Bassett Furniture Corporation. He informed Lambeth that he had a load coming in or already in and that he would split his commission with Lambeth on everything that he, Jones, sold to Lambeth's company. At the time of his conversation Jones handed Lambeth \$65 in cash. On other occasions the said Jones paid Lambeth amounts ranging from \$390 to \$454 each, always in cash, making at least eight of said payments, totaling \$2,977. Said Jones told Lambeth to bank the money paid him as far away from home as possible, and Lambeth opened an account for this purpose in Greensboro, N.C., some sixty miles from Martinsville. Said Lambeth already had a banking account in a Martinsville bank, where he deposited the salary paid him by the W. M. Bassett Furniture Corporation. At no time, throughout the whole period while these payments were being made to said Lambeth by the said Jones, did said Lambeth or said Jones tell anyone connected with the aforesaid W. M. Bassett Furniture Corporation about said payments. And during the period when respondent Jones was paying the aforesaid bribes to said Lambeth, no person connected with the said W. M. Bassett Furniture Corporation, except said Lambeth himself, knew that the said bribes were being made.

PAR. 6. Immediately after George W. Snyder entered the employment of the Bassett Furniture Co. of Bassett, Va., as foreman finisher, in August, 1927, he met respondent Mark L. Jones on the street in Bassett. Said Snyder had known said Jones for a number of years. At the time of this said meeting in August, 1927, Jones

handed Snyder about \$200 in cash, stating that he was splitting with Snyder the commission received by him, Jones, on varnish and shellac that he was selling to the Bassett Furniture Co. for the Blackburn Varnish Co. division of respondent Cook Paint & Varnish Co. Jones also informed the said Snyder at that time that he would pay him a certain percentage of commission so received by Jones, and Jones continued to make payments to Snyder, always in cash, and usually shortly after shipments of the respondent corporation's products were delivered to the Bassett Furniture Co. at Bassett, Va. On one occasion said Snyder drove over to Martinsville, Va., to the Thomas Jefferson Hotel, with a foreman finisher, by the name of Holbrook, employed at another factory, and called to see respondent Jones in his room at the Thomas Jefferson Hotel. On that occasion respondent Jones took Snyder in the bath room and shut the door and there paid him \$190 or \$197 in cash. Upon another occasion Snyder met said Jones at the Thomas Jefferson Hotel in Martinsville, Va., and Jones introduced Snyder to a man who was with Jones, telling Snyder that the man was his boss or sales manager. Payments were made by respondent Jones to Snyder on numerous other occasions, on an average of about once a month and soon after shipments of respondent corporation's products came in at the Bassett Furniture Co. factory. These payments averaged \$200 each. During the period of his employment with the Bassett Furniture Co. and while these bribes were being paid to Snyder by respondent Jones, neither the said Snyder or the said Jones told anyone connected with the said Bassett Furniture Co. about said payments. And during the period when respondent Jones was paying the aforesaid bribes to said Snyder, no one connected with the said Bassett Furniture Co. except said Snyder himself knew that said bribes were being paid.

PAR. 7. One Fred A. Hugenberg, who had been employed as assistant factory manager by the old Blackburn Varnish Co. prior to the time respondent Cook Paint & Varnish Co. took over certain of the Blackburn assets and business, was continued in that capacity in the Blackburn Varnish Co. division of respondent corporation from about April, 1927, to about the middle of the year 1928, when he became assistant superintendent of said division and its local city salesman for Cincinnati. In January, 1929, said Hugenberg was appointed manager of the Blackburn Varnish Co. division of respondent Cook Paint & Varnish Co., continuing in that capacity throughout the year 1929. During the period when said Hugenberg was manager of the Blackburn Varnish Co. division of respondent Cook Paint & Varnish Co., he made several trips to certain furniture

factories in the State of Virginia, said factories being customers of respondent corporation, which said customers were solicited and sold by said Mark L. Jones on behalf of said respondent corporation, stopping at the same hotel and occupying a room adjoining that of said Jones. While said Hugenberg was in his own or Jones' hotel room on one of his said visits to Virginia he was introduced to A. F. Lambeth, jr., and George W. Snyder by said respondent Mark L. Jones. The said Lambeth and Snyder, at that time, were both foremen finishers of furniture factories which were purchasing respondent Cook Paint & Varnish Co. products through said Mark L. Jones. Said Hugenberg at that time told said Lambeth that respondent Jones would be around to see Lambeth every once in a while to look after what Lambeth was to get and that Jones would fix things up with Lambeth. Said Hugenberg was introduced to said George W. Snyder by respondent Jones as Jones' boss or sales-manager.

PAR. 8. Respondent Mark L. Jones was indicted by the grand jury of Henry County, State of Virginia, at the July 1931 term of the Circuit Court of said county, for corruptly influencing agents, servants and employees, to wit, A. F. Lambeth, jr., and George W. Snyder, employees of W. M. Bassett Furniture Corporation and Bassett Furniture Co., respectively, through the payment of certain specific sums of money. Said indictment charged that said Mark L. Jones, on certain specified occasions, did unlawfully promise and give money and other gratuity of the value, respectively, of \$65, \$389, \$420, \$389, \$420, \$420, \$420, and \$455 to A. F. Lambeth, jr., the employee and servant of W. M. Bassett Furniture Corporation without the knowledge and consent of the said W. M. Bassett Furniture Corporation, with intent to influence the action of said A. F. Lambeth, jr., to the prejudice of the business of said W. M. Bassett Furniture Corporation.

The aforesaid grand jury further charged in the same indictment that said respondent Mark L. Jones, on certain specified occasions, did unlawfully offer, promise and give money and other gratuity of the value, respectively, of \$250, of \$200, and \$200, to the said George Snyder, an agent, employee and servant of Bassett Furniture Co., Inc., without the knowledge and consent of the said Bassett Furniture Co., Inc., and with intent to influence the action of the said George Snyder to the prejudice of the business of the said Bassett Furniture Co., Inc.

The said grand jury further charged that said respondent Mark L. Jones, at various times and places, in said county of Henry, State of Virginia, from the 1st day of August, 1929, until the 1st day of

January, 1930, did unlawfully offer, promise and give money and other gratuity, of value, to A. F. Lambeth, jr., as the agent, employee and servant of W. M. Bassett Furniture Corporation, without the knowledge and consent of the said W. M. Bassett Furniture Corporation, his employer as aforesaid, with intent to influence the action of the said A. F. Lambeth, jr., to the prejudice of the business of the said W. M. Bassett Furniture Corporation.

The said grand jury further charged that the said respondent Mark L. Jones, at various times and places, in said county of Henry, State of Virginia, from the 1st day of August, 1928, to the 1st day of August, 1930, did unlawfully offer, promise and give money and other gratuity, of value, to one George Snyder, he, the said George Snyder, then and there being an agent, employee and servant of Bassett Furniture Co., Inc., and that he, the said Mark L. Jones, then and there made said offer, promise and gift, of money and other gratuity, to the said George Snyder without the knowledge and consent of the said Bassett Furniture Co., Inc., as employer as aforesaid, with intent to influence, the action of the said George Snyder, to the prejudice of the business of the said Bassett Furniture Co., Inc.

Thereafter respondent Mark L. Jones appeared by counsel before the Circuit Court of Henry County, Va., and pled guilty to corruptly influencing agents, servants and employees as found by the indictment returned by the grand jury of the said county and, with the consent of the attorney for the commonwealth and the defendant, the court proceeded to hear and determine the cause without the intervention of a jury, and after hearings, evidence and argument of counsel found the said Mark L. Jones guilty as charged in the indictment and sentenced said Jones to pay a fine of \$500 and to serve two months in jail. The said court further ordered that, as there were circumstances in mitigation of the offense, the jail sentence be suspended during good behavior of said Jones for a period of one year.

The bribes paid by respondent Jones to the aforesaid Lambeth and to the aforesaid Snyder were the same bribes which said Lambeth and Snyder testified herein were paid them by Jones because of the sales made by him to their respective employers of the products manufactured and sold by respondent Cook Paint & Varnish Co.

PAR. 9. The respondent Cook Paint & Varnish Co. purchased the plant equipment and inventory of the old Blackburn Varnish Co. with full knowledge of the fact that the said company had been engaging in the practice of commercial bribery, particularly through its representative or salesman Mark L. Jones, and thereafter continued in its employ for a period of more than three years the afore-

said Mark L. Jones, and took no adequate precautions to prevent the continuance of the practice of commercial bribery by the said Mark L. Jones. During the period from April, 1927, to July, 1930, inclusive, while the said respondent Mark L. Jones was in the employ of respondent Cook Paint & Varnish Co., the said company paid said Jones large salaries and commissions, amounting to the sum of \$49,616.01 for the period from April 19, 1927, to December 31, 1927, inclusive, and amounting to \$62,917.79 for the period from January 1, 1929, to December 31, 1929, inclusive. No bona fide or adequate effort was made by respondent Cook Paint & Varnish Co. to ascertain whether or not respondent Mark L. Jones, during the period from April, 1927, to July, 1930, was paying bribes to employees of customers or prospective customers out of the large sums of money paid him as salary and commissions by respondent company.

PAR. 10. The duties of foremen finishers in the factories in which furniture is manufactured by the W. M. Bassett Furniture Corporation at Martinsville, Va., and by the Bassett Furniture Co. of Bassett, Va., include the supervision of the finishing work completely, from the time the furniture enters the finishing department until the finish has been entirely applied. The greater part of the exterior surface of furniture made by these two factories is not upholstered and must be treated or finished by the application of varnishes, such as those manufactured by respondent Cook Paint & Varnish Co. The foreman finisher has a number of men working under him to do the actual finishing work, but he has complete charge and supervision of their work and is responsible for the way in which the furniture is finished. While the foreman finisher does not purchase the finishing materials used by his employer, he has to report to his employer as to how said materials function and whether or not they are satisfactory. The employers of Lambeth and Snyder, the foremen finishers who were paid large sums of money by respondent Jones, relied largely upon the opinion and recommendation of said foremen as to whether or not the finishing materials used by them were satisfactory. One of said employers testified that, while he examined the furniture after it was finished with certain materials to determine whether its appearance was satisfactory, he relied pretty nearly 100 percent on the recommendations of the foreman finisher, because said foreman was the only man in the organization who knew anything about the finishing, or the mixture, or the application of the finishing materials.

PAR. 11. In trade territories where the representatives or salesmen of paint and varnish companies make payments of substantial sums of money to employees of customers and prospective customers to

induce such employees to use their influence in having their employers purchase or use the materials sold by the companies represented by the salesmen giving such moneys, representatives or salesmen of competing companies, not resorting to such practices, find it practically impossible to obtain any considerable amount of business. In one instance a high class salesman employed by a company to travel in the paint and varnish sales territory in Virginia and North Carolina reported to his employers that it was almost impossible to obtain any business in that territory without resorting to the practice known as commercial bribery. Because of this report and of the unwillingness of the company in question to resort to said practices it withdrew its representative from that territory, after expending a considerable amount of money in an unsuccessful effort to obtain business legitimately. There are manufacturers of varnish and kindred products who sell, or attempt to sell, or have attempted to sell their products in commerce in competition with respondent Cook Paint & Varnish Co. in the States of Virginia and North Carolina and other States of the Union, whose companies do not engage in the practice known as commercial bribery.

PAR. 12. The foregoing acts and practices of respondents, and each of them, of secretly giving or offering to give substantial sums of money to employees of customers or prospective customers of said respondents, or those of said respondents' customers or prospective customers, without the knowledge or consent of their employers, as inducements to influence said employees to purchase the products of respondents, or to recommend such purchases to said employers, or to recommend to said employers the use of respondents' products, or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondents' products to such employers or to influence such employers to refrain from dealing or contracting to deal with competitors of respondents, or to influence such employers to continue to deal with respondents have had the capacity and tendency to injure respondents' competitors and have injured said competitors by unfairly diverting trade from their goods to those of respondents, and have otherwise injured said competitors of respondents; and the effect of the aforesaid acts and practices of respondents has been to eliminate fair competition based upon the price and quality of competing products.

CONCLUSION

The acts and practices of respondents, and each of them under the conditions and circumstances as described in the foregoing findings are to the prejudice of the public and respondents' competitors

Order

18 F.T.C.

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 answers of the respondents thereto, the testimony and evidence introduced, and the briefs and oral arguments of counsel for the Commission and counsel for the respondent Cook Paint & Varnish Co., and the Commission having 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 respondent Cook Paint & Varnish Co., a corporation, and its officers, directors, agents, representatives, servants, employees and successors, or each of them, and respondent, Mark L. Jones, individually, 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 varnish, shellac, paints, wood-fillers, and kindred products, do cease and desist from directly or indirectly—

Secretly giving or offering to give sums of money to employees of customers or prospective customers of Cook Paint & Varnish Co., or those of its competitors' customers or prospective customers, without the knowledge or consent of their employers, as inducements to influence said employees to purchase the products of respondent Cook Paint & Varnish Co., or to recommend such purchases to said employers, or to recommend to said employers the use of respondent Cook Paint & Varnish Co.'s products, or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondent Cook Paint & Varnish Co.'s products to such employers or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, or to influence such employers to continue to deal with respondent Cook Paint & Varnish Co.

It is further ordered, That the said respondents, Cook Paint & Varnish Co., a corporation, and Mark L. Jones, an individual, within 60 days from and after the date of the service upon them of a copy of this order, shall each file with the Commission a report

in writing setting forth in detail the manner and form in which they are complying and have complied with and conformed to the order to cease and desist hereinabove set forth.

Commissioner Humphrey dissenting, in memorandum attached.

Dissent of Commissioner Humphrey

One of the one hundred and twenty-five employees of the respondent, Mark L. Jones, admitted three acts of bribery. He plead guilty to these acts and was fined. All this occurred and Jones left the employ of the respondent more than one year before the complaint was issued. These three acts of Jones constituted the only wrongdoing charged in the complaint. This was stated by the attorney for the Commission at the final argument of the case. There is no evidence and no act from which it can be presumed that such bribery will ever be renewed. All the circumstance and evidence is to the contrary. Under these circumstances, the Commission has no jurisdiction. There is no direct evidence of any kind that goes to show that the respondent, Cook, ever knew anything about the actions of Jones, complained of, and every act and circumstance, and Cook's whole business career, gives a lie to such conclusion.

The witness, McDonald, is discredited by his own testimony, and shown unworthy of belief. The other witnesses depended upon to show knowledge on the part of Cook are confessed bribe takers. The attempt to show guilty knowledge on the part of Cook by introducing pleas of guilty on the part of Jones, when Cook was in no way connected with or had knowledge of the proceedings, is a legal outrage and undoubtedly prejudiced the right of Cook.

But suppose, but by no means admitting, that the respondent did know of these three acts of bribery committed by Jones—which as I have said, constitute the only wrongdoing charged in the complaint—Do these three acts of one employee out of 125 constitute a method of doing business by the respondent? What would be the legal sense of issuing an order for respondent to cease and desist from a practice when it is admitted that such practice was abandoned more than three years ago, and more than a year before the complaint was filed and there is no testimony or circumstance from which the inference can be drawn that it is to be resumed. I cannot see any justification for the expenditure of time and money in the prosecution of a case that is so manifestly without public interest.

Order

18 F.T.C.

IN THE MATTER OF

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

MODIFIED ORDER TO CEASE AND DESIST

Docket 1597. Order, Sept. 25, 1933

Order modifying order in 15 F.T.C. 38, relating to the use of trade or other names which include the words "milling company", or words of like import, and the making of representations, by concerns engaged in the purchase, mixing, and sale of plain and selfrising flour, in competition with others similarly engaged, and also with those actually grinding wheat into flour and making and selling such products; as in the order set forth.

The motion heretofore filed by counsel for the Commission to modify the order to cease and desist that was originally issued by the Commission in the above-entitled case, having been heretofore, after due notice to respondents, presented and submitted to the Commission, and the Commission, having considered the same and being fully advised in the premises, now sustains said motion to modify said order to cease and desist.

It is therefore ordered, By the Commission that the cease and desist order heretofore issued by the Commission in this case be, and hereby is, modified by changing the period at the end of the first paragraph thereof to a semicolon and adding immediately thereafter the following words, to wit:

unless and until respondent shall insert and use also the words "Not Grinders of Wheat" in immediate conjunction with its title, corporate name, trade name or other designation, and in letters equally legible and conspicuous, when said title, corporate name, trade name or other designation is used on stationery, letterheads, bags, containers, advertising matter, or otherwise.¹

It is further ordered, That all other portions of said original order be and remained unaffected by this order.²

¹ Said paragraph required respondents, their representatives, etc., to—

"Cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words 'milling company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations."

² The second and remaining paragraph of the order constituted the usual compliance provision calling for such a report within 60 days.

Memorandum

MEMORANDUM

Similar modifying orders were issued as of the same date in the other cases of the Royal Milling group as follows:

D. V. JOHNSON, doing business under the name of TENNESSEE GRAIN Co. and TENNESSEE MILLING Co. Docket 1598. (See 15 F.T.C. 48.)

NASHVILLE ROLLER MILLS ET AL. Docket 1599. (See 15 F.T.C. 49.)

SNELL MILLING Co. ET AL. Docket 1600. (See 15 F.T.C. 51.)

J. A. WELLS ET AL., doing business as State Milling Co. and Myracle Milling Co., and individually. Docket 1602. (See 15 F.T.C. 55.)

E. C. FAIRCLOTH, SR., ET AL., doing business as Cherokee Mills and individually. Docket 1604. (See 15 F.T.C. 57.)

IN THE MATTER OF
MAGNECOIL COMPANY, INC.

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

Docket 1346. Complaint, June 16, 1930—Order, Sept. 25, 1933

Consent order requiring respondent, its officers, etc., in connection with the sale in interstate commerce of its blankets or other products, fitted with wiring devices, to cease and desist from,

Representing either orally, or by written or printed reading or pictorial matter that,

(1) Said products—

- (a) Constitute a great discovery or discoveries in electrotherapeutics or will cure or prevent diseases, ailments afford a beneficial or remedial influence therein other than such as may result from heat afforded by said products and from a subjective, mental stimulus or effect which may result from hope and confidence in said products; or
- (b) Are based upon and make practical application of the biological, chemical and other scientific discoveries and theories of well-known scientists or are the result of painstaking tests and long experience; or
- (c) When used as directed, transmit a radio-magnetic energy or a thermo-electromagnetism to the person using the appliance, causing an increased activity and revitalizing of the organs and cells of the body, a charging of the blood stream with electromagnetic energy, an elimination of poisons and waste matters or a magnetic stimulation of the various cells of the human body; with a resulting alleviation or cure of diseases or ailments from which the person may be suffering; or
- (d) Are used, endorsed and recommended by prominent and well-known physicians, scientists, hospitals, educators and other well-known and prominent persons, and have been tested and endorsed by such persons and by institutions for medical and scientific research; provided that nothing in the aforesaid paragraph shall be deemed to prohibit it from advertising or representing its said products as so endorsed or recommended where treatment by heat or elimination by sweating are indicated; or from advertising or representing that its said products are endorsed and recommended by certain specified physicians and others for such purposes as said physicians and others actually do recommend them, for where such endorsements are confined to conditions where heat or elimination by sweating are indicated and no compensation in any form is paid therefor; or
- (2) It occupies a large building in which its products are manufactured and its business generally conducted and that it has laboratories and an advisory and a consulting board of medical experts for analysis and advice in cases where respondent's products are being or are to be used; provided that nothing in such paragraph shall be deemed to prohibit it from advertising or representing that it occupies such portion of the building in which it is located as it actually does occupy.

Mr. Eugene W. Burr for the Commission.

Ball, Musser & Mitchell, of Salt Lake City, Utah, for respondent.

Complaint

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 Magnecoil Co., Inc., 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, Magnecoil Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. It is engaged in the business of manufacturing and selling, to persons located in various States of the United States, blankets and other appliances through which are run or into which are woven copper wire connected to an attachment for plugging into an electric light socket, and in causing said products, when so sold, to be transported from the place of manufacture through and into other States of the United States to the purchasers thereof. In the course and conduct of its said business respondent is in competition with other corporations, partnerships and individuals engaged in commerce between and among the various States of the United States.

PAR. 2. In order to induce the public to purchase its said products, respondent causes to be inserted in newspapers, magazines, periodicals, and other publications of general circulation throughout the United States and in certain sections thereof, advertisements offering its said products for sale and soliciting the purchase thereof, and sends from its place of business in Salt Lake City, State of Utah, to purchasers and prospective purchasers living at points in various States of the United States, letters, pamphlets, booklets, and circulars concerning its said products and offering the same for sale. In the aforesaid advertisements and literature respondent causes to be set forth many false, misleading, and deceptive statements and representations to the effect:

(a) That said products when used as a cover for the human body or a portion thereof will benefit, cure and prevent all diseases, ailments and defects of the human body, a great many of which are specified by name in said advertisements and literature, and that such products constitute the greatest discoveries in the field of electro-therapeutics. Whereas in truth and in fact, respondent's said products have no curative or therapeutic value apart from and except because of the heat generated by the electric current passing over the wires of said products, that is, except as a heating pad, and will

not benefit, cure or prevent any of the various diseases, ailments and defects of the human body.

(b) That said products are based upon and make practical application of the biological, chemical and other scientific discoveries and theories of well-known scientists and are the result of painstaking and long experience and tests. Whereas in truth and in fact, said products are not so based and make no practical application of any scientific discoveries or theories for the cure or prevention of human diseases or ailments.

(c) That the said products when used as respondent directs set up a radio-magnetic energy and a thermo-electro-magnetism which is transmitted to the person using the appliance causing an increased activity and revitalizing of the organs and cells of the body and a charging of the blood stream with electro-magnetic energy, and an elimination of many times more poisons and waste matters than is possible by any other method, and a magnetic stimulation of the various cells of the human body, with a resulting cure of any disease or ailment of which the person may be suffering. Whereas in truth and in fact, said products when so used do not produce any radio-magnetic or thermo-electro-magnetism which is transmitted to or has any effect upon the human body, and do not cause any results other than those which would be produced as a result of and because of the heat generated in the appliances.

(d) That said respondent occupies a large building in which its products are manufactured and its business generally conducted and that it has laboratories and an advisory and a consulting board of medical experts for analysis and advice in cases where respondent's products are being or are to be used. Whereas in truth and in fact, respondent occupies only a part of one floor in this building and has no laboratory or medical advisory or consulting board.

(e) That said products are used, endorsed and recommended by prominent and well-known physicians, scientists, hospitals, educators and other well-known and prominent persons, and have been tested and endorsed by such persons and by institutions for medical and scientific research. Whereas in truth and in fact, said products are not and have not been so used, tested, endorsed or recommended.

(f) Respondent makes other false, misleading and deceptive statements and representations in its said advertisements and literature of like tenor and effect as the statements and representations in this paragraph above specifically set forth.

PAR. 3. The aforesaid false, misleading, and deceptive statements and representations made by respondent in its advertisements and literature have the capacity and tendency to and do cause many persons to purchase and use respondent's products in the belief that said statements and representations are true.

PAR. 4. 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 considered by the Federal Trade Commission upon complaint of the Commission and the substituted answer of respondent which answer constitutes a waiver of further proceedings herein and a consent that the Commission may make, enter, and serve upon respondent an order to cease and desist from the methods of competition in the complaint herein alleged,

It is now ordered, That respondent, Magnecoil Co., Inc., its officers, directors, agents, employees, and successors do cease and desist from advertising or representing either orally or by written or printed reading or pictorial matter, in connection with the sale of its blankets, or other products fitted with wiring devices, in commerce between and among the several States of the United States, or between any State and the District of Columbia, or between any State or the District of Columbia and any foreign country, or in the District of Columbia:

(a) That its blankets and other said products constitute a great discovery or discoveries in electro-therapeutics or will cure or prevent diseases, ailments or defects of the human body or will afford a beneficial or remedial influence therein other than such as may result from heat afforded by said products and from a subjective, mental stimulus or effect which may result from hope and confidence in such said products of respondent; or

(b) That respondent's said products are based upon and make practical application of the biological, chemical and other scientific discoveries and theories of well-known scientists or are the result of painstaking and long experience and tests; or

(c) That the said products, when used as respondent directs, transmit a radio-magnetic energy or a thermo-electro-magnetism to the person using the appliance causing an increased activity and revitalizing of the organs and cells of the body, a charging of the blood stream with electro-magnetic energy, an elimination of poisons and waste matters or a magnetic stimulation of the various cells of the human body; with a resulting alleviation or cure of diseases or ailments from which the person may be suffering; or

(d) That said respondent occupies a large building in which its products are manufactured and its business generally conducted and that it has laboratories and an advisory and a consulting board of medical experts for analysis and advice in cases where respondent's products are being or are to be used; or

(e) That said products are used, endorsed and recommended by prominent and well-known physicians, scientists, hospitals, educators and other well-known and prominent persons, and have been tested

and endorsed by such persons and by institutions for medical and scientific research.

Provided, however, that nothing in paragraph (d) contained shall be deemed to prohibit respondent from advertising or representing that it occupies such portion of the building in which it is located as respondent actually does occupy; and nothing hereinabove in paragraph (e) contained shall be deemed to prohibit respondent from advertising or representing that its said products are endorsed and recommended by said described persons and hospitals where treatment by heat or elimination by sweating are indicated; or to prohibit respondent from advertising or representing that its said products are endorsed and recommended by certain specified physicians and for others for such purposes as said physicians and others actually do recommend their use where such endorsements are confined to conditions where heat or elimination by sweating are indicated and no compensation in any form is paid therefor.

It is further ordered, That the respondent, Magnecoil Co., Inc., within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

E. R. SIERING, DOING BUSINESS UNDER THE TRADE
NAME OF DR. CHEESEMAN MEDICINE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2092. Complaint, Feb. 28, 1933—Order, Sept. 25, 1933*

Consent Order requiring respondent, trading under the name and style of Dr. Cheeseman Medicine Co., his agents, etc., in connection with the sale or offering in interstate commerce of a certain medicinal preparation, to desist from advertising or in any otherwise representing directly or by implication that (a) said preparation can be depended upon for relief in female troubles, or (b) that letters or other statements concerning the efficacy of the said preparation in the treatment of any ailment have been authorized or signed by C. S. Cheeseman, M.D., when in truth and fact such letters or statements are not so authorized or signed.

Mr. Robert H. Winn for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", said Commission charges that E. R. Siering, trading under the name of Dr. Cheeseman Medicine Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said act, and states its complaint in that respect as follows:

PARAGRAPH 1. Respondent is an individual, having his principal office and place of business at 11 East Twelfth Street, New York City. Respondent is now and has been for more than two years last past engaged in advertising and selling a medicinal preparation, designated "Dr. Cheeseman's Pills", which is represented as a treatment for delayed or suppressed menstruation. Respondent causes said medicinal preparation, when sold, to be transported from his place of business in the City of New York, State of New York, into other States of the Union to purchasers thereof at their respective locations.

PAR. 2. Respondent, in the course and conduct of his business, has made false or misleading statements and representations in advertisements inserted in various publications having interstate circula-

tion, including "American Farming", issue of December, 1931, and otherwise:

Ladies positive relief for delayed or overdue periods. Harmless * * *

Dr. Cheeseman's Pills—For delayed or suppressed periods, give positive relief * * * Double strength in stubborn cases. Harmless * * *

* * * For delayed or suppressed periods give positive relief in stubborn cases.

Millions of women throughout the world have used our famous pills for their wonderful health giving powers.

Dr. Cheeseman's Pills regulate the system and quickly allay suffering and relieve irregularities.

Every woman who values her health should always have a box of these wonder pills convenient.

Avoid serious consequences—keep healthy—neglect is often dangerous.

They have banished untold suffering from millions of women throughout the world.

* * * removes all worry and danger of suppressed periods.

The irregularities that menace the health and cause most of the headache, backache, colic, and nervousness with which women are periodically afflicted are eliminated through the use of Dr. Cheeseman's Pills.

They have given relief in the most stubborn cases—and have proven one of the greatest blessing womanhood has received from science.

There is no longer reason to suffer the periodic pangs of distress and pain. Let Dr. Cheeseman's Pills solve your problem.

A trial will convince any woman.

They are officially guaranteed under the Pure Food and Drugs Act.

Dr. Cheeseman's Pills are certain to allay the suffering that comes from monthly irregularities due to any cause.

Their reputation is founded on * * * unflinching satisfaction.

They are * * * certain in their results.

These pills may be taken with perfect safety according to directions.

* * * Dr. Cheeseman's Pills have relieved women of worry and pain. Let them do the same for you.

In truth and in fact said statements and representations were and are incorrect in certain respects and exaggerated in others, in that said preparation cannot be depended upon generally to induce menstruation; it does not possess health-giving powers; it is not harmless, and has not been guaranteed under the Pure Food and Drugs Act. Said statements and representations have the capacity and tendency to mislead and deceive the purchasing public into buying said medicinal preparation, in the erroneous belief that they are true, and that the use of said preparation will accomplish the results set out or indicated in said advertisements.

PAR. 3. In the course and conduct of his business, respondent has also distributed, in interstate commerce, to prospective purchasers of his medicinal preparation, aforesaid, circular letters purporting to have been signed by C. S. Cheeseman, M.D., when in truth and in

fact said letters were not signed by C. S. Cheeseman, M.D., nor by his direction.

PAR. 4. In the course and conduct of his business respondent is in competition with corporations, partnerships, firms and individuals engaged in the sale and shipment in interstate commerce of medicinal preparations used for the treatment of ailments similar to those for which respondent recommends his "Dr. Cheeseman's Pills", whose ability to compete successfully with respondent has been and is being lessened and injured by the methods of respondent set forth in paragraphs 2 and 3 hereof.

PAR. 5. The practices and methods of competition utilized by respondent, described in paragraphs 2 and 3 hereof, are to the detriment 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 come on for final disposition by the Federal Trade Commission upon the complaint and respondent's answer waiving hearing on the charges set forth in the complaint and refraining from contesting the proceeding, thereupon pursuant to paragraph (2) of Rule III of its Rules and Regulations duly adopted for the purpose of carrying out 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 Commission having considered that respondent by such answer has thereby consented that the Commission may make, enter and serve upon him an order to cease and desist from the unfair methods, and the Commission being fully advised in the premises:

It is now ordered, That the respondent E. R. Siering, trading under the name and style of "Dr. Cheeseman Medicine Company" and his agents, servants, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of a certain medicinal preparation known and designated as "Dr. Cheeseman's Pills" cease and desist from advertising or in any otherwise representing, directly or by implication:

(1) That said preparation can be depended upon generally to induce menstruation; or that it possesses health-giving powers; or that it is harmless; or that it has been guaranteed under the Pure

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Food and Drugs Act; or that it has any therapeutic value whatsoever other than is actually the case;

(2) That letters or other statements concerning the efficacy of the said preparation in the treatment of any ailment have been authorized or signed by C. S. Cheeseman, M.D., when in truth and fact such letters or statements are not so authorized or signed.

It is further ordered, That 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
HIRES TURNER GLASS 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 1935. Complaint, Nov. 4, 1931—Decision, Sept. 26, 1933

Where a corporation engaged in the manufacture and sale of mirrors, designated and advertised as "copper back", or "copper backed", or "backed with copper", products made by it under licensed process involving the covering of the reflecting medium with a mixture of shellac and copper dust, spread thereon by brush or spray, notwithstanding fact that (1) said products were not the more costly, expensive, durable and favorably known mirrors, long prior thereto generally understood by the trade and ultimate consumers from said terms as those in which the reflecting medium is covered with a protective coating consisting of a continuous film or sheath of solid metallic copper applied through the electro plating process, and (2) said applications did not result in the application to the glass of a solid continuous metallic copper coating or film;

With tendency and capacity to confuse, mislead and deceive the trade and members of the purchasing public as to the nature of manufacture of its aforesaid mirrors, and induce the purchase and use thereof in such erroneous belief, and divert trade to it from competitors engaged in the sale of ordinary or similar mirrors, and from competitors engaged in the sale of the genuine and more costly "copper back" or "copper backed" mirrors, and who do not misrepresent the kind, structure or mode of manufacture of their respective products:

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

Mr. Harry D. Michael for the Commission.

Mullen, Mullen, Shea & Massey, of Washington, D.C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Pennsylvania corporation, engaged in the manufacture of mirrors and other glass products, and with principal place of business in Philadelphia, with misrepresenting product as to nature or manufacture, 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 in sale of said mirrors to furniture manufacturers, contractors, builders, and other

users of mirror glass, advertises and describes as "copper back mirrors", "copper backed mirrors", "mirrors backed with copper", and by other similar designations, certain mirrors put upon the market by it within the last two years, notwithstanding the fact that said mirrors are not the preferred, genuine, copper back mirrors, sheathed with copper through the electrolytic process, as known to the trade and purchasing public from such designations, but are made in the usual way through placing a coating of silver upon the glass, and applying to such coating, by brush or other mechanical means, a mixture of copper dust and shellac.¹

Said representations have the capacity and tendency to confuse, mislead, and deceive the trade and the public into the belief that respondent's mirrors are backed with a continuous sheath of solid copper, without regard to the method used, or that they are so backed with copper by the use of electrolysis, and to induce their purchase and use thereof in such mistaken beliefs, and to divert trade to it from competitors engaged in sale in interstate commerce of ordinary mirrors, and those engaged in the sale of the more costly, genuine "copper back" mirrors, whom it is enabled to undersell, while meeting, approximately, the prices of manufacturers of the ordinary mirrors; 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Hires Turner Glass Co., a corporation, charging said respondent with the use of unfair methods of competition in inter-

¹The process employed in making the genuine copper-back mirrors, as understood by trade and public, and the advantages associated with such mirrors, and the preference therefor, are alleged in paragraph 5 of the complaint as follows:

PAR. 5. That long prior to the time that respondent began to manufacture and sell said mirrors and to describe them as aforesaid, other manufacturers of mirrors had devised and used a method and mode of covering the silver on the backs of mirrors with a continuous sheath or layer of solid copper by the use of electrolysis, and such mirrors had been described by the manufacturers thereof and had become and are now known in the trade and by the purchasing public as "copper backed" or "copper back" mirrors. That mirrors backed with a sheath of copper by the electrolytic process as aforesaid came to be and are now known in the trade and among the purchasing public as mirrors that will not deteriorate as ordinary mirrors do and that resist the action of the atmosphere and climatic conditions, thus making them particularly suitable for use in places where they are subject to exposure to fumes, steam, moisture, and water. That many members of the trade and of the purchasing public prefer mirrors so covered by a sheath of solid copper for the purposes aforesaid to mirrors covered with copper dust and shellac as used by respondent.

state commerce in violation of the provisions of Section 5 of said act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having been heard in oral argument before the Commission, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hires Turner Glass Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, and has its factory and principal place of business in the city of Philadelphia in the State of Pennsylvania. Said respondent is now, and has been engaged for more than twenty years last past in the manufacture of mirrors and other glass products and in the sale thereof in interstate commerce in and among the various States of the United States, and said respondent causes and has caused its said products when so sold to be transported in interstate commerce from its said place of business in Pennsylvania to, into and through States of the United States other than Pennsylvania to persons, firms and corporations to whom or to which its said products are or have been sold.

PAR. 2. In the summer of the year 1930 respondent began to manufacture in commercial quantities and to sell in interstate commerce as aforesaid a type of mirror having a protective coating or backing consisting of a mixture of shellac and copper dust or powdered copper. Respondent continued to make and sell such mirrors as aforesaid in commercial quantities up to and during the hearings of this cause. A small quantity of such mirrors had been made by respondent in the fall of 1929. No general advertising was done by respondent in connection with said type of mirror until the spring or summer of 1930 when a large quantity of circulars or folders was distributed in and among the trade. At first respondent made said type of mirror by applying the mixture of shellac and powdered copper directly over the reflecting medium (silver nitrate). A coating of what is known in the trade as ordinary mirror

backing paint was then applied. Later respondent reversed the relative position of these coats as to a considerable portion of such type of mirrors made but also continued the said original method. Respondent applies the mixture of shellac and powdered copper with a brush but it may be applied with a spray.

Said mirrors are made by respondent under a license agreement with Peacock Laboratories, Inc. There are other licenses of Peacock Laboratories, Inc., using the same process. Respondent was one of the first, if not the first, of such licensees to use the Peacock process and to advertise and promote the sale of the product. In said folders previously referred to respondent described its said mirrors above described as "copper back mirrors", "copper backed mirrors" and "mirrors backed with copper." Said terminology was also used by respondent, its officers, agents and representatives in letters, invoices and other papers and communications and in conversations with the trade. Since the complaint herein was filed respondent has used the expressions "mechanically copper sealed nonelectrolytic" and "mechanically copper coated, nonelectrolytic", as well as the terms previously given, to designate its said mirrors.

PAR. 3. At the time respondent began to manufacture, advertise and sell its said mirrors which it described as "copper back" mirrors and similar designations, and prior thereto, there was on the market a type of mirror, known to and designated by a large and substantial part of the trade and purchasing public as "copper back" mirrors and "copper backed" mirrors which were, and are, entirely different composition, structure, and characteristics from respondent's said mirrors, as well as differing in process of manufacture. Said mirrors which had become so known are characterized by a protective coating on the back of the mirror of a continuous film or sheath of solid metallic copper which is adherent to the reflecting medium (usually silver nitrate). Such mirror backing is and has been made by the electrolytic process which is also known as the electroplating process. Mirrors of this type have been made in the United States, advertised and sold commercially in large quantities for various uses and purposes and in large sizes since 1925. Prior to that time there had been manufacture of such mirrors in this country to a more limited extent.

One such manufacturer has made such mirrors in this country for special uses for more than 40 years. Others had made and sold such mirrors since 1914. Some of such manufacture was for special uses, some experimental, and some for only a short time or for a few years. Moreover, mirrors of this type had been imported from abroad and sold in this country in large quantities from about the

year 1900 up to the period of the World War. Such importations and sale have continued in a lesser degree from said period up to the present time. Such mirrors were referred to and called generally in the trade as "copper back" mirrors or "copper backed" mirrors in references to the same in conversations, letters and other communications. Such use of the said terms included manufacturers, dealers, users and customers generally. Manufacturers and dealers in said type of mirror familiarized the trade, including retail dealers, architects, contractors, manufacturers of products using such mirrors, and ultimate consumers, with said terms by means of extensive advertising in various forms, correspondence, solicitation by salesmen and otherwise.

One large manufacturer of said type of mirror placed a sticker on the front surface of each such mirror made by it featuring the term "copper back." Such stickers were used by the thousands and mirrors on which they were placed were shipped to dealers and ultimately delivered to consumers in all parts of the country. The process of manufacture and nature of the product were explained in letters to representatives of said company in all parts of the United States and also in general advertising matter. This information was also passed on to members of the trade and customers by salesmen and agents so that the said terminology and general method of manufacture became known to the trade and customers of said company who dealt in or used such product. While another large manufacturer of said type of mirror used a trade-mark name to designate its said product, yet it was well known in the trade and among users of such products that such trade-mark name stood for the "copper back" mirror of that particular make. Moreover, in referring to said make of mirrors in conversation, correspondence, etc., the terms "copper back" or "copper backed" were commonly and generally used. The advertising matter of this company also described the general nature of the backing and, in some cases, the process by which it is made. In other instances the term "copper back" is used in connection with the trade-mark name. Said company also imported large quantities of such mirrors which were known, described and sold as "copper back" mirrors. Other manufacturers of this type of mirror used the same descriptive terms in the sale of their mirrors.

Said use of such terms, as well as knowledge of the general process of manufacture and the nature of the product was well established among a large and substantial portion of the trade and purchasing public who deal in and use such products at the time respondent and other licensees of Peacock Laboratories, Inc., began to manu-

facture, advertise and sell the type of mirror made by them and having thereon a protective coating of a mixture of shellac and powdered copper and at the time respondent and such licensees began to describe their type of mirror as "copper back" or by similar designations. Other terms are and have been used to describe "copper back" mirrors made by the electrolytic process of the protective copper backing thereof, such as "copper coated", "electro copper plated", "copper plated", "electro plated", "copper plating", "copper coating", "copper backing", "a thin sheet of copper", "copper sheathing" and "electro plated copper backed", but all such names are properly descriptive thereof either as a designation of the product or of the process of manufacture or both. However, none of such terms has been or is so generally or commonly used as the terms "copper back" or "copper backed."

PAR. 4. The terms "copper back", "copper backed", and "backed with copper" are aptly, truly and accurately descriptive of the mirrors made with a protective coating of a continuous sheath or film of copper deposited on the reflecting medium by the electrolytic process. Such backs are in fact solid metallic copper. Said terms are not aptly, correctly and accurately descriptive of the type of mirror made by spreading upon the back thereof a protective coating consisting of a mixture of shellac and powdered copper regardless of whether such coating is immediately next to the reflecting medium or separated therefrom by an intervening coating of ordinary mirror backing paint. Such a mixture of shellac and powdered copper does not form a solid metallic copper coating or film. The metallic element is not continuous nor are the particles of copper in metallic contact. Each particle of copper is surrounded by a film of shellac and no part of the copper is adherent to or in metallic contact with the reflecting medium. Such a mixture for such use is properly described as a "paint."

PAR. 5. Ordinary or standard mirrors are made by first placing upon the glass used a coating of silver nitrate or other material which forms the reflecting medium. Over this reflecting medium is then spread a thin film of shellac and over this is then applied one or more coats of what is known in the trade as ordinary mirror backing paint. Such mirror backing paint is also used on respondent's mirrors as aforesaid and also on the electrolytic "copper back" mirrors heretofore described. The electrolytic "copper back" mirrors require expensive and special equipment to make, and usually sell for a higher price than ordinary or standard mirrors. Respondent's said type of mirrors requires no special equipment and sells for

approximately the same price as ordinary mirrors or only slightly in excess thereof.

Prior to the time respondent and other licensees using said Peacock process began to manufacture such mirrors, the electrolytic "copper back" mirrors in and among a substantial part of the trade and purchasing public, acquired a reputation as being mirrors of high quality and long life and as being mirrors that would resist adverse atmospheric and climatic conditions for a much longer time than ordinary mirrors.

PAR. 6. From the time respondent began to manufacture and sell its said mirrors which it described as "copper back" and by similar designations, it has been in competition in the sale of said mirrors in interstate commerce with manufacturers and dealers in the ordinary type of mirrors above described and also with manufacturers of and dealers in "copper back" mirrors made by the electrolytic process. During such time other individuals, firms, and corporations in the various States of the United States are and have been engaged in the manufacture of said ordinary mirrors and said "copper back" mirrors made by the electrolytic process and in the sale thereof in interstate commerce, and such manufacturers and dealers have caused and do now cause their products, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof.

PAR. 7. The representations of respondent as aforesaid in regard to its said mirrors have had and do have the tendency and capacity to confuse, mislead and deceive the trade and members of the purchasing public into the belief that such mirrors are backed with a continuous sheath or film of solid metallic copper which is adherent to the reflecting medium or that it is backed with such a film of copper deposited thereon by the electrolytic process, when in truth and in fact they are not so backed. Said representations of respondent have had and do have the capacity and tendency to induce members of the trade and of the purchasing public to purchase and use said product because of the erroneous beliefs as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of said ordinary mirrors and also of said "copper back" mirrors made by the electrolytic process.

PAR. 8. There are among the competitors of respondent in the sale of its said mirrors those who in no wise misrepresent the kind, structure or mode of manufacture of such competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

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CONCLUSION

The practices 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 commerce and are in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, Hires Turner Glass Co., a corporation, its officers, directors, agents, representatives, servants, and employees in connection with the sale, offering for sale, or distribution in interstate commerce of mirrors having thereon a protective coating consisting of a mixture of shellac and powdered copper, cease and desist from designating the same as "copper back" mirrors, "copper backed" mirrors, mirrors "backed with copper", or by other word, words or expression of the same meaning or like import.

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

Complaint

IN THE MATTER OF

YOUELLS-PRIVETT EXTERMINATING CORPORATION

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

Docket 2068. Complaint, Oct. 15, 1932.—Decision, Sept. 26, 1933

Where a corporation engaged in the manufacture of vermin exterminator and in the sale thereof to druggists and other retailers, for resale to the ultimate purchaser, falsely represented through labels and other advertisements that said product would mummify carcasses of rats and mice and prevent offensive odors therefrom, and supplied retail customers with advertising of similar tenor for soliciting the business of the ultimate purchaser; with result that such customers bought said product in reliance upon the truth of such false representations, and repeated the same to the ultimate purchaser who bought in reliance upon the truth thereof, and with tendency to increase the sale of said product to the injury of competitors who did not pursue such methods, and whose ability to compete was lessened and injured thereby, and to mislead and deceive prospective purchasers as to effect, results and value of product in question, and divert trade to it from its competitors:

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

Mr. PGad B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation, engaged in the manufacture and sale of an alleged vermin exterminator under the names of "Rat Snap" and "Youells Original Rat Snap", and with principal place of business in Plainfield, with misbranding or mislabeling, advertising falsely or misleadingly as to nature of product, and offering deceptive inducements to purchase, 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 for more than two years last past, in the sale of said product principally to various druggists and other retail customers in the various States, through its labels and other published advertisements "represents to its prospective customers that the said product, when used according to directions printed upon the package, will mummify the carcasses of the killed rats and mice, prevent offensive odor from the same, and that cats and dogs will not touch it."

Respondent further, as alleged "also places in the hands of its aforesaid retail customers advertising matter setting forth said false representations, knowing and intending that the said representations are to be passed on to the ultimate consumer with the object and result of effecting a sale by the said retailer customer to the said ultimate consumer."

Respondent also, "as a further inducement to its prospective retail customers", "has promised to cause to be inserted and paid for advertisements containing such false claims with the intent and object and effect of promoting the resale of said product, and respondent has thereafter failed and refused to perform according to such promise."

Respondent's prospective retail customers, as alleged "believing and relying upon the truth of the aforesaid representations, have purchased and do purchase respondent's said product, have resold and do resell the same to the ultimate consumer, and have repeated or passed on the aforesaid false representations to the ultimate consumer, who in turn, believing and relying upon the truth of respondent's representations relative to the effect of his said product, purchase the same from the said retailers"; to the detriment of the public and competitors, including those who do not pursue such methods of competition, and whose ability to compete with it is and has been lessened and injured thereby.

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, Youells-Privett Exterminating Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed 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 thereunto. Thereupon, this proceeding came on for consideration without oral argument, upon the record herein and brief of counsel for the Commission, after due notice to 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing in the State of New Jersey with principal place of business at Plainfield, in said State. Since 1926, it has been engaged in the manufacture and sale of vermin exterminator under the name "Youell's Original Rat Snap" principally to various druggists and other retail customers for resale to the ultimate purchasers. Respondent has caused such product, when sold, to be shipped from its place of manufacture in the State of New Jersey through and into various other States of the United States to the purchasers thereof. The Commission finds that in the conduct of its business, respondent was and is in competition with other corporations, partnerships, firms and individuals engaged in the sale and distribution of rat poisons in interstate commerce.

PAR. 2. In the course and conduct of its business, as aforesaid, through its labels and other published advertisements, respondent has represented to its prospective customers that the said product, when used according to directions printed upon the package, will mummify the carcasses of killed rats and mice, prevent offensive odors from the same, and that cats and dogs will not touch it. Respondent also places in the hands of its aforesaid retail customers advertising matter setting forth said representations knowing and intending that the said representations are to be passed on to the ultimate purchaser with the object and result of effecting a sale by the said retail customer to the said ultimate purchaser.

PAR. 3. The product manufactured and sold by respondent is a hard cake composed of approximately 48 percent molasses, 35½ percent grain cereal, 2.6 percent mineral constituent, 1¼ percent phosphorus, 13.3 percent water, a very small amount of hydrochloric acid, and a trace of cyanide. The product is administered by leaving crumbled portions thereof where they will be accessible to rats and mice.

On behalf of respondent, lay testimony was received of instances where rodents had succumbed to this poison and had left no odor. A sample of respondent's product furnished by it was tested by the Bureau of Biological Survey through its Division of Predatory Animal and Rodent Control. The testimony of the witnesses who conducted such test was that rats and mice after eating the poison died but did not become mummified or dried up, and that there was a most offensive odor therefrom. Briefly, these tests consisted of placing hungry rats of different species in separate cages with five grams of respondent's product in each cage. The following day all

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of the rats were dead and no offensive odors were noticed. The second day there was a noticeable odor. The third day the odor was very noticeable and on the fourth day the odor became so strong and repulsive that it was necessary to remove the dead rats from the laboratories. The carcasses at that time were round and inflated from decomposition and were not dried up nor mummified in any way.

From a consideration of all of this testimony the Commission finds that respondent's representation that the said product, when used according to directions, will mummify the carcasses of the killed rats and mice is false and misleading; and respondent's representation that it will prevent offensive odors from the same is false and misleading. In paragraph 2 of the complaint it was alleged that respondent falsely represented that cats and dogs would not touch his product. The Commission finds nothing in the evidence to sustain this allegation.

PAR. 4. Respondent's prospective retail customers believing and relying upon the truth of the aforesaid false representations have purchased and do purchase respondent's said product; have resold and do resell the same to other ultimate purchasers, and have repeated or passed on to the ultimate purchasers the aforesaid false representations and the ultimate purchasers believing and relying upon the truth of such representations relative to the effect of the said product have purchased the same from the said retailers.

PAR. 5. The testimony of representatives of competitive firms was to the effect, and the Commission finds that such claims tended to increase the sales of respondent's product to the injury of competitors who do not pursue the methods of competition hereinabove described and whose ability to compete with respondent is and has been lessened and injured by reason thereof.

PAR. 6. The use by respondent of the foregoing false representations in connection with the interstate sale of its product has the capacity and tendency to mislead and deceive prospective purchasers as to the effect, results and value of the use of this said product and tends to divert trade from its said competitors to respondent.

PAR. 7. The complaint further charged that respondent, as an additional inducement to its prospective retail customers, promised to cause to be inserted and paid for, advertisements containing such false claims with the intent, object and effect of promoting the resale of said product and that respondent thereafter failed and refused to perform according to such promise. Respondent's testimony was to the effect that promises of free advertising were never made

in bad faith, but that in certain instances such contracts were not carried out, due to lack of capital. There is no evidence that such failures constituted a method or business practice on the part of respondent in connection with its interstate trade.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the testimony taken and brief filed in support of the complaint, 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 Youells-Privett Exterminating Corporation, a corporation, and its agents, representatives, servants, employees, and each of them, in connection with the sale or offering for sale in interstate commerce of a rat poison of the same or substantially the same composition as the poison heretofore known as "Youell's Original Rat Snap", cease and desist from making the following statements and representations or statements and representations of like or similar import or effect:

(1) That such poison will mummify the carcasses of killed rats or mice.

(2) That such poison will prevent offensive odors from killed rats and mice.

It is further ordered, That so much of the aforesaid complaint as charges the respondent with falsely representing that cats and dogs will not touch the said poison and with breach of agreements with customers relative to advertising be, and the same is, hereby dismissed on the ground that such charges have not been proven.

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

IN THE MATTER OF
S. W. PIKE, SEEDSMAN, 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 2086. Complaint, Jan. 19, 1933—Decision, Sept. 26, 1933

Where a corporation engaged in the sale of seeds of various kinds, through advertisements in newspapers and magazines of general circulation, and through such agencies as post cards, catalogs, leaflets, and other printed and written matter distributed through the mail,

- (a) Represented that it would send free of charge two dozen Giant Darwin Tulips, five packages of assorted flower seed, one package of new Everblooming Easter Lily and its catalog, for five names of friends who love flowers and 20 cents to cover packing and postage, and that if accepted within ten days it would send free of charge a beautiful hardy Chinese Regal Lily bulb, and sent post-card communications or advertisements advising the addressee that "As your friend informed us you are interested in flowers, we have a *free offer* of 2 dozen Giant Darwin Tulips together with our catalog to send you", and offered also to "send post paid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New 'Everblooming Easter Lily' which will blossom most all summer if planted now (also a wonderful house plant) all for only five names of friends who love flowers and 20 cents to cover packing and postage", with the further offer to include, in event of acceptance within ten days, "Free, a beautiful hardy, Chinese Regal Lily bulb", along with the assertion "This opportunity may never come to you again";

The facts being no Giant Darwin Tulips were sent, pursuant to said first advertisement, and the so-called "Free offer" was predicated upon an order from its catalog, of \$3 or more, neither said tulips nor lily bulb were included without charge, but cost thereof was included in that of the other items, and orders were received and accepted irrespective of any ten-day limitation, which it included to indicate as unusual, its usual and characteristic method of competition; and

- (b) Made such pretended free offers in catalogs and other advertising distributed among purchasers and prospective purchasers as "we will send 40 large pkts. assorted vegetable and flower seed; one-half dozen fine Everblooming Tuberoses and 25 of our best named Gladioli in assorted colors, measuring 3½ to 5 inches circumference, all for only 98 cents"—together with offer to include, in event of acceptance within ten days, "free a large blooming size Regal Lily that sells for 50 cents—don't ask how we are able to do this, but take advantage of it now, for this offer may never be made again", along with the assertion that "In appreciation of your order, we give these wonderful *free* offers * * * taken from our select stock", and "being large growers we are in a position to give these wonderful offers to you", and made it its practice to distribute with its catalog a so-called free offer of two dozen large Giant Darwin Tulips;

The facts being that shipment of the tulips was conditioned upon the making up of an order of \$3 or more hereinabove set forth, and cost thereof and of the Regal Lily bulbs was included in prices charged for other items, so that it derived a compensation from any and all transactions resulting from its so-called "free offers", or any of them;

With tendency and capacity to mislead and deceive the public into believing said tulips and other things would be received without charge in return for names of five friends and 20 cents to cover packing and postage, and with effect of misleading and deceiving the public into acceptance of such so-called free offer, and purchase of products catalogued by it, in accordance with the terms thereof, in the belief that it was offering its products at reasonable prices, while furnishing purchasers those things described in its so-called free offers, without charge to the purchaser or compensation or return to it, and of diverting trade to itself from competitors offering and selling their various products, truthfully advertised and described, and with capacity and tendency so to mislead, deceive and divert:

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

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation, engaged in the sale of seeds of various kinds, and with principal place of business at St. Charles, Ill., with advertising falsely or misleadingly in violation of the provisions of Section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as aforesaid, advertises "free" offers of certain seeds and bulbs, the facts being that the things thus advertised free, are either not sent, or are predicated upon the making of certain other purchases, at a price sufficiently high to compensate respondent for the entire transaction, so that such so-called free articles are not in fact included with other things ordered by the purchaser, without cost to such purchaser; with effect of misleading and deceiving the public and of diverting trade to respondent from competitors truthfully advertising and describing their various products, and with capacity and tendency so to mislead, deceive and divert; all to the prejudice of the public and competitors.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued, and on January 21, 1933, caused duly to be served on S. W. Pike, Seedsman, Inc., hereinafter designated respondent, its complaint, charging that said respondent had

¹ The various allegations of the complaint, as set forth in detail therein, are found and set forth substantially verbatim in the findings, infra.

been and then was using unfair methods of competition in interstate commerce in violation of the provisions of said act, fixing February 24, 1933, at the office of the Federal Trade Commission in Washington, D.C., as the time and place, for appearance or answer, and containing a copy of the Rules of Practice of the Commission with respect to answer or failure to answer, the pertinent part thereof being as follows, to wit:

Failure of the respondent to appear or to file answer within the time as above provided for (referring to the time fixed for answer, not less than thirty days from the service of the complaint), 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 hearings on the charges set forth in the complaint.

The respondent having failed either to appear or to answer, or to take any other action in this proceeding, or in relation thereto, at or within the time fixed by the complaint, or at any other time, and this proceeding having come on to be heard upon the complaint, in accordance with the aforesaid Rules of Practice, and the Commission having considered the record and being fully advised in the premises, finds all the allegations of the complaint to be true and that the respondent has waived hearings on the charges set forth in the complaint and the Commission files this its report in writing stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, S. W. Pike, Seedsman, Inc., is now, and has been for several years last past a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at St. Charles in said State. It has been, during said period, and now is, engaged in the business of offering for sale and selling seeds of various kinds in commerce among and between the various States of the United States, and when sold in pursuance of orders therefor received by mail, it has caused, and now causes such product or products to be transported from its said place of business at St. Charles, in the State of Illinois, to purchasers located in the various States of the United States other than the State of Illinois.

In the course and conduct of such business respondent has been, and is in competition with individuals, partnerships, and corporations offering for sale and selling seeds in interstate commerce.

PAR. 2. It has been and is the practice of respondent to offer for sale and sell its seeds by means of advertisements in newspapers and magazines of general circulation in and through the various States of the United States, and also through the agency or medium of post cards, catalogs, leaflets, and other printed and written matter dis-

tributed through the mails in and through the various States of the United States.

As inducement to the purchase of its products respondent has, on such post cards distributed as aforesaid, represented that it would send free of charge two dozen Giant Darwin Tulips, five packages of assorted flower seed, one package of New Everblooming Easter Lily and its catalog for five names of friends who love flowers and 20 cents to cover packing and postage, and that if accepted within ten days it would send free of charge a beautiful hardy Chinese Regal Lily bulb.

In truth and in fact it has not been and is not the practice of respondent to furnish free of charge, nor has it furnished free of charge, two dozen Giant Darwin Tulips or any Giant Darwin Tulips to persons who, in compliance with the terms and conditions of respondent's offer on its said post cards, have transmitted to respondent the required names of flower lovers and the 20 cents to cover packing and postage. It has been and is the practice of respondent to send such persons five packages of assorted flower seed, one package of New Everblooming Easter Lily, and, when accepted within ten days, to send a Chinese Regal Lily bulb, together with the catalog and a leaflet containing language purporting to be a free offer of two dozen Giant Darwin Tulips.

As further inducement to the purchase of its products respondent has, in advertisements including such post cards, catalogs, leaflets, and other printed and written matter, distributed in and through the various States of the United States as aforesaid, made false representations and statements to the effect that it was and is offering to the public certain of its products free of charge.

The following is typical of the false and misleading representations of respondent in respect to one of its so-called free offers on post cards:

As your friend informed us you are interested in flowers, we have a **FREE OFFER** of 2 doz. Giant Darwin Tulips together with our catalog to send you. Will also send postpaid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New "Everblooming Easter Lily" which will blossom most all summer if planted now (also a wonderful house plant) all for only 5 names of friends who love flowers & 20¢ to cover packing & postage. If accepted within 10 days, will include **FREE** a beautiful hardy Chinese Regal Lily bulb. This opportunity may never come to you again.

The following is typical of the false representation of respondent in respect to its so-called free offer which has appeared in catalogs distributed by it among purchasers and prospective purchasers in the various States of the United States:

To new customers: Just to prove to you the wonderful quality of "Pike's Can't Be Beat" seeds and bulbs, we will send 40 large pkts. assorted Vegetable

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and Flower seed; ½ dozen fine Everblooming Tuberoses and 25 of our best named Gladioli in assorted colors, measuring 3½ to 5 inches circum., all for only 98¢—If this wonderful offer is accepted within 10 days, will include FREE a large blooming size Regal Lily that sells for 50¢—Don't ask how we are able to do this, but take advantage of it now, for this offer may never be made again.

In appreciation of your order, we give these wonderful FREE offers which are taken from our select stock. Being large growers we are in a position to give these wonderful offers to you. We doubt if any other concern in the country will duplicate these offers which are good for 10 days from the time you receive this catalog. Be sure to stipulate your choice on your order sent in.

It has been and is the practice of respondent to distribute with its catalogs, among purchasers and prospective purchasers in the various States of the United States, a leaflet on which there appear near the top thereof in large and conspicuous letters the words "free offer." Below such words in conspicuous letters, but smaller than those in which the words "free offer" are expressed, appear the words "2 Dozen Large Giant Flowering Darwin Tulips", and below such language is the following:

On every order made up from our catalog amounting to \$3 or more we will send two dozen large Giant Darwin Tulips in assorted colors. Our selection of at least 12 kinds, absolutely free, if free offer is returned within 10 days.

In truth and in fact the products so offered to the public as free by respondent were not and are not delivered, furnished, or supplied free of charge, or without any compensation or return to the respondent, and the cost of such products purported and purporting to be given free of charge has been, was, and is included by respondent in the price purchasers have been and are required to pay for products purchased from respondent in accordance with the terms of its various so-called free offers.

The products of respondent described as Chinese Regal Lily bulbs, offered free if the terms of such offer are accepted or fulfilled within ten days, have not been and are not furnished free of charge, but on the contrary respondent has been enabled and is enabled to derive a compensation out of or from any and all transactions resulting from its various free offers, or any of them.

The various offers have not been special or unusual but have been and are the customary methods employed by the respondent in the regular course of its business, and its restriction of certain of its offers to a period of 10 days has been and is employed by respondent in order to indicate as unusual a practice which, in fact, has been and is its usual and characteristic method of competition, and it has been and is the practice of respondent to disregard entirely the

10-day limitation expressed in its advertisements, and to accept and fill orders received by it from purchasers and prospective purchasers, whether or not they have been accepted within 10 days.

PAR. 3. The language used by respondent on post cards distributed by it among purchasers and prospective purchasers in the various States of the United States, to wit:

As your friend informed us you are interested in flowers, we have a free offer of 2 doz. Giant Darwin Tulips together with our catalog to send you. Will also send postpaid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New "Everblooming Easter Lily" which will blossom most all summer if planted now (also a wonderful house plant) all for only 5 names of friends who love flowers & 20¢ to cover packing & postage. If accepted within 10 days, will include FREE a beautiful hardy Chinese Regal Lily bulb. This opportunity may never come to you again.

has had, and has the tendency and capacity to mislead and deceive the public into the belief that in return for five names of friends who love flowers and 20 cents to cover packing and postage, respondent would send two dozen giant Darwin tulips, five packages assorted flower seed for fall or spring planting, one package of New Everblooming Easter Lily and a Chinese Regal Lily bulb, if its offer should be accepted within ten days.

The so-called free offer of respondent distributed among purchasers and prospective purchasers in connection with its catalog, has had and has the capacity and tendency to mislead and deceive and has misled and deceived the public into acceptance of such so-called free offer of respondent, and into the purchase of products listed in its catalog, in accordance with the terms of such so-called free offers, in the belief that respondent has been and is offering for sale and selling its products for reasonable prices and yet furnishing purchasers thereof products described in such free offers without charge to the purchasers and without compensation, return or loss to respondent.

The aforesaid acts and practices of respondent have had the capacity and tendency to divert, and have diverted, trade to respondent from its competitors offering for sale and selling in interstate commerce, their various products truthfully advertised and described.

CONCLUSION

The above and foregoing practices described in paragraph 2 hereof have been and are all to the prejudice of the public and competitors of respondent, and have been and are unfair methods of competition within the 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.

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ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Commission upon the complaint, in accordance with the provisions of its Rules of Practice, therein set forth, and duly served upon respondent, and the Commission having made its report in writing stating its findings as to the facts and its conclusion drawn therefrom that respondent, S. W. Pike, Seedsman, Inc., a corporation, has been and is violating the provisions 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",

It is ordered, That respondent, S. W. Pike, Seedsman, Inc., a corporation, its officers, agents and employees, in connection with offering for sale or selling its products in interstate commerce, cease and desist from representing in postcards, letters, circulars or otherwise as follows:

(1) As your friend informed us you are interested in flowers, we have a *free offer* of 2 doz. Giant Darwin Tulips together with our catalog to send you. Will also send postpaid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New "Everblooming Easter Lily" which will blossom most all summer if planted now (also a wonderful house plant) all for only 5 names of friends who love flowers & 20¢ to cover packing & postage. If accepted within 10 days, will include *free* a beautiful hardy Chinese Regal Lily Bulb. This opportunity may never come to you again,

and from making representations of similar tenor or import unless and until each and every article of merchandise represented as being offered purchasers is sent them in accordance with such representations.

(2) That any of its products are offered free to the purchaser of other products when the value of the former is included in the price of the latter.

It is further ordered, That respondent file with the Commission 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 with the order to cease and desist.

Complaint

IN THE MATTER OF

CARMAN-ROBERTS COMPANY, INC.

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

Docket 2113. Complaint, Aug. 17, 1933—Order, Oct. 9, 1933

Consent order requiring respondent corporation, its officers, etc., in connection with the sale or offer in interstate commerce of alkalies, detergents or cleansers, to cease and desist from substituting or passing off trisodium phosphate as and for monosodium phosphate, to purchasers or prospective purchasers thereof.

Mr. PGad B. Morehouse for the Commission.

Franc & Wright, 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 Carman-Roberts Co., Inc., a corporation, hereinafter referred to as respondent, has been 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, Carman-Roberts Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the city of Pittsburgh, State of Pennsylvania. It was originally incorporated in the year 1922 as "Laundry Supply Company", and adopted its present corporate name November 5, 1929. For more than two years last past it has been engaged in the sale, both at wholesale and retail, of alkalies, and detergents or cleaners under various trade names, mixed and compounded by it and consisting of such ingredients as caustic soda, soda ash, trisodium phosphate and sodium bicarbonate. When sold, respondent causes said products and compounds to be shipped in kegs or barrels from its principal place of business in Pennsylvania in, through and to various other States of the United States for delivery to the purchasers thereof. In the course and conduct of its business as aforesaid, respondent is and has been in direct and active competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate

commerce of like products and compounds. Respondent has never mixed, compounded, sold or distributed in interstate commerce a product known as monosodium phosphate.

PAR. 2. There are three forms of sodium phosphate, to wit: monosodium, disodium and trisodium, each form containing the number of atoms of soda indicated by the name thereof. Monosodium phosphate has an acid reaction; disodium phosphate is neutral; trisodium phosphate is alkaline. While monosodium phosphate is a more expensive product than trisodium phosphate—and is used as the active principle in sal hepatica and other medicinal and carbonated waters and also as a re-agent in baking powders—the difference between it and trisodium phosphate is not apparent to the eye.

PAR. 3. In the course and conduct of its business as aforesaid respondent has been following the practice of knowingly substituting and shipping trisodium phosphate to purchasers who have ordered monosodium phosphate and the said purchasers have unknowingly accepted and paid respondent for trisodium phosphate under the erroneous belief that respondent had complied with their order according to the terms thereof and had not “passed off” or substituted an entirely different and less expensive product therefor.

PAR. 4. In the course and conduct of its business as aforesaid, by means of filling with trisodium phosphate, the orders of purchasers for monosodium phosphate, respondent has followed the practice of misrepresenting the quality, composition, effect and value of the commodity sold to the said purchasers, and they, believing and relying upon the truth of said representation have bought and paid respondent therefor.

PAR. 5. The acts and things above alleged to have been done, the substitution as aforesaid, and the false and misleading representation thereby made by respondent, are to the prejudice and injury of the public and to the competitors of respondent, have the tendency unfairly to divert trade from respondent's competitors to respondent, 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 respondent's answer waiving all further procedure and consenting that the Commission may make, enter and serve upon it an order to cease and desist from the unfair methods

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of competition charged in the complaint, and the Commission being fully advised in the premises:

It is now ordered, That the respondent Carman-Roberts Co., a corporation, and its officers, agents, representatives, and employees, in connection with the sale or offering for sale in interstate commerce, of alkalies, detergents or cleansers, cease and desist from substituting or passing off trisodium phosphate as and for monosodium phosphate to purchasers or prospective purchasers thereof.

It is further ordered, That the respondent shall, within 60 days from the date of 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 therewith.

IN THE MATTER OF
**AMERICAN COLLEGE, AMERICAN UNIVERSITY, DENTON
N. HIGBE, INDIVIDUALLY AND AS PRESIDENT OF
AMERICAN COLLEGE AND AS PRESIDENT OF AMERICAN
UNIVERSITY**

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

Docket 2034. Complaint, May 13, 1932—Decision, Oct. 10, 1933

- Where two corporations respectively engaged in the sale of correspondence courses in, (1) "pedopractic", through which course it was undertaken to teach purchasers how to diagnose, treat and correct many disorders and deformities of the foot, by manual physical procedure and other methods, including dietetics, mechanotherapy, exercise, manipulations, massage, etc., and, (2) physiotherapy, through which course, involving such subjects and/or basic sciences as physiological therapeutics, mechanotherapy, nature cure, spinal adjustment, and suggestive therapeutics, and anatomy, psychology, pathology, symptomatology and diagnosis, it was undertaken to teach purchasers, by mail, how to diagnose, treat and relieve human ailments by manual physical means, and by methods of mental suggestion; and an individual, president and principal owner of the capital stock of the two corporations, and by virtue of such ownership in active control thereof and manager and director of their policies;
- (a) Falsely represented through their advertisements that graduates of the course of "Pedopractic" should earn from \$200 to \$500 a month and that their earnings might easily be from \$400 to \$1,000 a month, or more, or even \$50 a day, and that graduates in the course of physiotherapy could have large clienteles, big lucrative practices, and amazingly big incomes, with many physiotherapists earning from \$3,000 to \$5,000 a year, and that the student, almost immediately after graduation, could earn a larger income than he made before taking it, facts being such representations were so greatly exaggerated as to be false and misleading to prospective student purchasers;
- (b) Represented that the respective corporations contracted or undertook to refund to the students of their respective courses every cent paid therefor, without red tape or delay, if earnings did not come up to the student's expectations, or, in the case of the pedopractic course, if the students were in any way dissatisfied with instruction and service received, or did not feel capable of entering the work, or to continue their instruction until satisfied, should their earnings prove disappointing, facts being such refunds were admittedly granted only under exceptional circumstances, and were not granted where a graduate's office, following opening thereof by him, was thereafter closed by State authorities, and such representations were false and misleading:

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- (c) Represented that no license was required by persons practicing methods of diagnosis, treatment and correction which they undertook to teach in the course in pedopractic, and that their home study course in physiotherapy would qualify the student to practice such subject successfully, facts being that licenses are required by the great majority of the States as a condition precedent to diagnosis, treatment and correction of disorders and deformities of the foot, by persons who hold themselves out as qualified to treat and correct such ailments, or for diagnosis and treatment of human ailments, as students in or graduates of the course of physiotherapy would purport to diagnose and treat, for which license the great majority of such students or graduates would not be acceptable candidates; and
- (d) Represented that millions of patients demanded the treatment in physiotherapy, for the giving of which only a few thousand were qualified, and that students in and graduates of the latter course might qualify as physiotherapists and establish themselves in a profession, the services of which were demanded, as aforesaid, with resulting elimination of the long wait so common to other professions:

With capacity and tendency to mislead and deceive the public and student and prospective student purchasers into believing they were offering courses of instruction which qualified students and graduates thereof to earn large sums through the practice of the aforesaid subjects, that courses in question were offered under a money back arrangement, by which the money paid would be refunded at the desire of the student, and that students in and graduates of the courses were qualified to practice the things taught therein in any State, without examination or license, and with result that a large number of the public, in reliance upon such mistaken beliefs thus induced, applied for and subscribed to said courses in preference to those of competitors, who did not make such false, exaggerated, misleading and deceptive statements and representations, and trade was thereby diverted from them:

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

Mr. Robert H. Winn for the Commission.

Mr. Leo Conlon, 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 American College, a corporation, American University, a corporation, and Denton N. Higbe, individually and as president and principal stockholder of respondent American College, and as president and principal stockholder of respondent American University, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation

of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent American College is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State. Respondent American University is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. Respondent Denton N. Higbe caused respondent American College, a corporation, and respondent American University, a corporation, to be organized and incorporated and is the president and principal stockholder of respondents American College and American University, and as such respondent Higbe owns and controls the said respondent corporations and manages and directs their policies. Respondent Higbe has his principal office and place of business in the city of Chicago, State of Illinois.

Respondents' businesses consist in the sale and delivery by mail and other means of transportation of certain courses of instruction to subscribers or purchasers thereof located in various States of the United States. After the said courses of instruction have been subscribed for or purchased the respondents ship and cause to be transported from their principal places of business in Chicago, Ill., the printed matter, examination questions, charts, information, and paraphernalia comprising the said courses of instruction to the purchasers thereof located in a State or States of the United States other than the State of Illinois. Said subscribers or purchasers are members of the general public, and are hereinafter referred to as students.

In the course and conduct of their said businesses respondents are in competition with other corporations and individuals and with firms and partnerships engaged in the sale and interstate delivery, by mail and other means of transportation, of courses of instruction to subscribers or purchasers thereof located in various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent American College, advertises and offers for sale a course of instruction in a subject called by them Pedopractic. This course of instruction is represented by respondent American College as a course of instruction in drugless and non-surgical methods for the alleviation and correction of foot ailments.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and in and about advertising and offering for

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sale the said course of instruction in Pedopractic respondent American College has inserted or caused to be inserted advertisements in various periodicals, newspapers, and magazines having an interstate circulation. Among others, the following representations and statements are included as a part of such advertisements:

Earn money as a foot specialist. Learn quickly at home * * * Earn while you learn * * * Build up a business or practice that will pay you thousands yearly.

Earn big money as a foot specialist * * * Learn quickly at home in spare time * * * Earn while you learn * * * We teach you how to quickly "cash in" on your knowledge.

Be a foot specialist. Earn more money * * * Learn quickly at home in spare time * * * Earn while you learn. The demand for your services will be so great that you can start in your own home and earn the cost of your training while you are studying the course.

In the course and conduct of its business as aforesaid respondent American College caused letters, circulars, booklets and brochures to be sent to those prospective students who have had their attention directed to the course in Pedopractic offered for sale and sold by respondent American College by such advertisements as those heretofore referred to or otherwise and who have requested information regarding the said course in Pedopractic. These requests have been received from various States of the United States, and respondents caused the said letters, circulars, booklets, and brochures to be sent to such prospective purchasers from the State of Illinois to their points of location in various States of the United States. In these letters, circulars, booklets, and brochures the respondent American College made the following, among other, statements and representations:

Of course, if you have the intelligence and the determination possessed by the average individual who investigates Pedopractic, you will, in all probability, be able to make a great deal more than you can make in any other vocation open to you *and be your own boss*. But why be satisfied with just a good income—say one of \$3,000 to \$5,000—*when you can earn twice this much for a few years, by being the first Pedopractor in a live and growing community.*

The cost of the training need not cause you to hesitate because you can begin earning money when you finish the first half of the course and *can easily earn more than the entire cost of the course before you have completed it.*

But don't conclude that you will not get very much from each person, because you permanently correct their foot disorders and foot deformities. The permanent removal of the causes usually required a dozen calls or more, over a course of several weeks, and you can easily collect from \$2 to \$3 a visit and \$10 to \$20 for arch supports—*from \$25 to \$50 from each client*—when the advantages of your plan are pointed out.

How much any practitioner can earn will depend largely upon his skill, his experience, his personality, his business ability, the population of the

community in which he is located, etc. The earnings of Foot Correctionists vary for the reasons stated, but it would be safe to say that one should make from \$200 to \$500 a month.

The industrious student should have little difficulty in earning, during his study of his course, many times the cost of the course to him.

Foot correctionists earn large incomes * * * The average charge per visit is \$2. Time required is about fifteen minutes. This means an income of \$8 per hour or \$50 daily. And once established there is no limit to the number of patients the properly trained Pedopractor can attract.

In truth and in fact, the actual or probable earnings available to those who subscribe for or purchase the correspondence course in Pedopractic offered for sale and sold by respondent American College are in most instances less than the amounts stated by said respondent, or may be earned only after many years of practice. In many jurisdictions students or graduates of this course would not be allowed to engage at all in the practice of Pedopractic without obtaining a license by passing an examination given under the supervision of the State government, or satisfying the legal requirements calling for professional training in an approved school, or both.

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, respondent American College in soliciting the sale of and selling its correspondence course in "Pedopractic" in interstate commerce has written or caused to be written and has published or caused to be published letters, circulars, booklets, and brochures; which letters, circulars, booklets and brochures respondent has sent or caused to be sent to prospective purchasers of its said correspondence course located in various States of the United States. In the said letters, circulars, booklets, and brochures said respondent has published or caused to be published certain statements and representations, among which are the following:

IS A LICENSE REQUIRED?

* * * So far as we know, there are no laws in any State providing for the examination and licensing of Pedopractors or those who use only the methods included in our course in Pedopractic. The legal rights of Physicians, Surgeons, Osteopaths, Chiropractors, Chiropodists and Podiatrists are clearly defined in the laws which provide for their examination and licensing. None of the practitioners, nor none of the boards providing for their examination and licensing, have any legal or other right to modify, alter, amplify or broaden the definitions of their systems of practice to include any measures, methods or procedures which the legislatures enacting the laws did not intend to have included in the laws.

In truth and in fact, the statutes of many States provide that chiropodists or podiatrists cannot practice in such States without having first secured a license. Most of them provide that the applicant for

a license must pass an examination, or that the applicant must have attended for a certain period of time a school or university teaching the subject for the practice of which the applicant is to be licensed, and the said school or university must be one which is approved by the licensing authorities in the State for which the license is to be given, or both. Many of the said statutes define chiropodists, podiatrists, or other forms of medical or drugless practice in terms sufficiently broad to bring students and graduates of the course in Pedopractic in the respondent American College within the terms of the statute. Respondent American College, with reference to its course in Pedopractic, is not an approved school or college within the meaning of such statutes in any State of the United States.

PAR. 5. In the course and conduct of its business as described in paragraph 1 hereof respondent American College in soliciting the sale of and selling its correspondence courses in interstate commerce has caused the same to be widely advertised in periodicals, newspapers, and magazines having an interstate circulation, and also through the medium of letters, circulars, booklets and brochures circulated by it or caused by it to be circulated in interstate commerce, containing the following, among other, statements and representations;

Now that you know that we are really asking you to make an investment—and an investment which will pay you greater returns than any other legitimate investment—and our *safe-guarding your investment by agreeing to refund your deposits to you* if your earnings do not come up to your expectations, I am quite sure that you will arrange to join us without further delay.

* * * you have evidently overlooked the tuition refund agreement. *This legal, binding, straight-forward contract to refund every cent you pay, without red-tape or delay, makes it possible for you to find out for yourself, without risk, just what I can and will do for you.*

We take all the risk of your being satisfied. You need not hesitate because you fear the picture that we are painting is "too good to be true." If we fail in any way to give you the instruction or service we promise you or if you do not feel capable of entering the practice of this work, we will either continue to instruct you until you are satisfied or will refund the money you have paid us.

* * * *We will accept your enrollment with the simple, straight-forward, and perfectly fair, written agreement to refund to you the money you pay us if you are in any way dissatisfied with the instruction and service you receive—you to be the sole judge.*

Our tuition refund agreement enables you to find out for yourself just what I can and will do for you—without your risking a cent.

More than that, *I am agreeing to make you successful or to refund your money if I fail.* I take all the risk of your not being satisfied, but I have no fear of your not making good because I have been doing this for fourteen years and I know what I can do.

These said statements and representations have the capacity and tendency to deceive and mislead the consuming public into the belief

that the said correspondence course offered for sale and sold by respondent American College is offered on a money-back arrangement whereby the purchasers thereof may claim and obtain a refund of the purchase price thereof if, as and when for any reason they become dissatisfied with the course or with earnings obtained as a result of taking the course or after graduating if they fail to be successful in their profession. As a matter of fact any refund by the respondent is conditioned upon the respondent being satisfied that the student has honestly endeavored to complete the course and second, as a condition precedent to any refund by the respondent, the study material must be returned to the respondent by express within two weeks after the time when the student finishes the course, and further that the student notify the respondent by registered mail of his desire for a refund, stating the student's reasons for desiring such refund.

PAR. 6. In the course and conduct of its business as described in paragraph 1 hereof respondent American University is now and for more than one year last past has been engaged in conducting a school, offering for sale and selling correspondence courses, the curriculum of which includes a correspondence course in physiotherapy, and in the sale and distribution of such course in commerce between and among various States of the United States, causing the printed matter, examination questions, charts, information and paraphernalia comprising said course when sold to be shipped from the place of business of respondent American University, located in the State of Illinois, to purchasers thereof located in a State or States of the United States other than the State of Illinois.

PAR. 7. In the course and conduct of its business as heretofore set forth respondent American University, in and about soliciting the sale of and selling its correspondence course in physiotherapy in interstate commerce has caused the same to be advertised in periodicals, newspapers, magazines, and other publications having an interstate circulation, and also through the medium of pamphlets, folders, circular letters, and other printed matter distributed by it in interstate commerce, and which advertisements and advertising matter contained, among others, the following statements and representations:

Drugless healing! A new easy way to master it at home and earn big fees. * * * In other words, there is waiting for you a dignified profession, a large clientele, and amazing big incomes. * * * Big money for you if you act at once.

You can become a physiotherapist. Many earn \$3,000 to \$5,000 a year. * * * Here is a dignified profession with amazingly profitable possibilities and everywhere a waiting clientele. * * * You can quickly establish a practice

of your own or you can assist physicians or administer to patients in their own homes.

Drugless healing! A new, easy way to master it at home and earn big fees. * * * In other words, there is waiting for you a dignified profession, a large clientele, and amazing big incomes.

First, let us take the cost in money. The total cost of the course may appear to be a rather large sum, but it really amounts to only a few cents a day for a few months' time. Even if it is necessary for you to take these monthly payments out of the amounts you would otherwise spend for food, clothing, entertainment, or something for your home, is this too much to pay for *training that will enable you to eat whatever you want to eat, wear the finest clothes, and to have a magnificently furnished home and the luxuries and the recreations of those who have the determination and the courage to climb over the obstacles between themselves and success?*

You can qualify as a Physiotherapist in a comparatively short time and, on graduation, you will find that you can quickly establish yourself in your profession and immediately reap the rewards that await the qualified Physiotherapist. The study of Physiotherapy offers you the easiest way to acquire a professional training in a profession that is comparatively new, scientifically sound, of great benefit to humanity, lucrative in practice, and one that will assure your social and professional standing in the community in which you practice.

One outstanding advantage of mastering our course in Physiotherapy, which is perhaps not sufficiently emphasized in our printed literature, is that the completion of the course enables one to enter a profession and to obtain the recognition and the benefits everywhere accorded to professional people.

* * * There are millions of patients seeking and demanding Physiotherapy treatment and only a few thousand qualified to serve them! There is no other profession, vocation or occupation offering such possibilities of immediate returns in the way of increased income, professional recognition and better social standing.

Now that you know that we are really asking you to make an investment—and an investment which will pay you greater returns than any other legitimate investment—and *are safeguarding your investment by agreeing to refund your deposits to you* if your earnings do not come up to your expectations, I am quite sure that you will arrange to join us without further delay.

I have shown you by testimonial letters what our graduates have done and are doing in the way of building up big lucrative practices. I have told you that I would see that you received the same personal, individual instruction that has made others so successful * * *

If you are hesitating because of the expense in connection with your training, you should remember that one of the big advantages of Physiotherapy, over all other professions, is that almost immediately upon graduation you can earn a larger income than you are now making. The big demand for qualified Physiotherapists entirely eliminates the long waiting period after graduation which is so common to other professions. Many of our students earn the cost of their training long before they finish the course.

Our home study course in Physiotherapy will qualify you to successfully practice Physiotherapy, either as an assistant to a medical or drugless physician, in charge of a Physiotherapy department in a hospital or sanitarium, or as an independent practitioner. * * *

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* * * you have evidently overlooked the tuition refund agreement. *This legal, binding, straightforward contract to refund every cent you pay, without red tape or delay, makes it possible for YOU to find out for yourself, without risk, just what I can and will do for you.*

In truth and in fact it is not always possible for qualified physiotherapists to immediately obtain more lucrative earnings than they have received in the past. There is not a great demand for physiotherapists. The profession is overcrowded, and it is not probable that graduates of the correspondence course in physiotherapy sold by respondent will be able to enter immediately into a profession which is lacking in competition.

In truth and in fact the statutes of many States provide that drugless healers (including physiotherapists) cannot practice in such States without having first secured a license. Most of them provide that the applicant for a license must pass an examination, or that the applicant must have attended for a certain period of time a school or university teaching the subject for the practice of which the applicant is to be licensed and the said school or university must be one which is approved by the licensing authorities in the State for which the license is to be given, or both. Respondent American University with reference to its course in Physiotherapy is not an approved school or college within the meaning of such statutes in any State of the United States.

The said statements and representations as to the tuition refund agreement have the capacity and tendency to deceive and mislead the consuming public into the belief that the said correspondence course offered for sale and sold by respondent is offered on a money-back arrangement whereby the purchasers thereof may claim and obtain a refund of the purchase price thereof if, as and when for any reason they become dissatisfied with the course or with earnings obtained as a result of taking the course or after graduating if they fail to be successful in their profession. As a matter of fact any refund by the respondent is conditioned upon the respondent American University being satisfied that the student has honestly endeavored to complete the course and second, as a condition precedent to any refund by the respondent, the study material must be returned to the respondent by express within two weeks after the time when the student finishes the course, and further that the student notify the respondent by registered mail of his desire for a refund, stating the student's reasons for desiring such refund.

PAR. 8. The said false, misleading, and deceptive statements and representations heretofore referred to have the capacity and tendency to deceive and mislead the consuming public into the belief

that the said correspondence courses offered for sale and sold by respondents are offered on a money-back arrangement whereby the purchasers thereof may claim and obtain a refund of the purchase price thereof if, as, and when, for any reason, they become dissatisfied with the course or with earnings obtained as a result of taking the course; that the purchasers thereof will be able upon completing a part of the course to begin immediately the practice thereof and earn large and lucrative fees; that upon the completion of any course the purchaser thereof will be able immediately to start practice without arranging for a license to practice and do so without violating any law or ordinance of any legal jurisdiction of the United States, when such are not the facts.

PAR. 9. The false and misleading statements and representations heretofore referred to in soliciting the sale of and selling the said correspondence courses have the capacity and tendency to induce the purchasing public to purchase the said correspondence courses from the respondents in reliance upon the said false and misleading statements and representations.

PAR. 10. The use by respondents of the false and misleading statements and representations as heretofore 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 respondents' competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the correspondence school or extension course business.

PAR. 11. 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents American College, a corporation, American University, a corporation, and Denton N. Higbe, individually and as president of respondent American College and as president of respondent American University, charging them with the use of unfair methods of competition in inter-

state commerce in violation of the provisions of said act. Respondents having entered their appearance and filed their answer to the complaint herein, hearings were held and evidence was introduced before an examiner of the Federal Trade Commission theretofore duly appointed, whereupon this proceeding came on for final hearing on the briefs filed in support of the complaint and in support of the answer, counsel for the Commission and counsel for the respondents having waived 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. Respondent American College is an existing corporation organized in the year 1915 under and by virtue of the laws of the State of Illinois with its principal office in the city of Chicago in the State of Illinois.

PAR. 2. Respondent American University is an existing corporation organized in the year 1913 under and by virtue of the laws of the State of Illinois with its principal office in the city of Chicago in the State of Illinois.

PAR. 3. The individual respondent, Denton Higbe, is the president of both of the corporate respondents, and his office and place of business is in the city of Chicago in the State of Illinois. He is the principal owner of the capital stock of the corporate respondents herein, and by virtue of such ownership actively controls, manages and directs their policies. He organized and was one of the incorporators of respondent American College.

PAR. 4. In the course and conduct of their businesses as hereinafter set out, respondents and each of them are in competition with other corporations, partnerships, firms and individuals likewise engaged in the sale and distribution in interstate commerce of correspondence school courses comprised of written or printed instructions, materials, appliances and devices sold and offered for sale for the purpose of instructing and training the student purchasers thereof in the arts of "pedopractic" and physiotherapy.

PAR. 5. Respondents through respondent American College in advertisements circulated throughout the United States offer for sale and sell a correspondence course under the name "Pedopractic", by means of which they undertake to teach purchasers and prospective purchasers thereof how to diagnose, treat and correct many and various disorders and deformities of the human foot by manual physical procedure and other methods, including dietetics, mechano-

therapy, exercise, manipulations, massage, heat, light, water, electricity (involving the use of electric vibrators, therapeutic lamps and heaters), corrective shoes and stockings and the making and fitting of arch supports. The materials comprising the course consists of 28 typewritten mimeographed lessons, each varying from the other in length, from 5 to 16 pages, but averaging about 8 pages each. These sheets of paper 8½ by 11 inches, together with certain tools, supplies for making supports, rubber balls and wood blocks used in the lessons on manipulation, and other appliances are sold and delivered to the student purchasers. By devoting 10 to 12 hours a week to the course it is estimated that the student can complete it in six months. The price of the course is \$127.50 in cash or \$150 in monthly installments of \$15 each. The number of students taking the course in July, 1932, was approximately 600. Over 60% of the students who take the course complete it. When sold, respondents cause the materials and commodities comprising said course to be transported from the city of Chicago in the State of Illinois, into and through various other States of the United States to the student purchasers thereof.

PAR. 6. Through their advertisements aforesaid respondents in the course and conduct of their business represent that graduates of this course in Pedopractic should earn from \$200 to \$500 per month, and that the earnings of such graduates may easily be \$400 to \$1,000 a month or more or even \$50 a day. By means of such claims respondents indirectly represent the actual past earnings of graduates to be equally comparable with the aforesaid figures. The evidence, however, was to the effect that of four "graduates" one earned \$300 over a period of 10 months; one earned \$3,900 a year; one earned nothing; and the fourth testified that "Pedopractic" is of such poor demand by the public that a beginner could hardly make anything at it. Respondents, having offered no testimony in support of said claims, the Commission finds that respondents' representations relative to what their "Pedopractic" graduates have earned are so greatly exaggerated as to be false and misleading to prospective student purchasers.

PAR. 7. Respondents further represent in advertisements that the American College contracts to refund to its students of "Pedopractic" every cent of the money paid for the course without red tape or delay or to continue to instruct them until they are satisfied if their earnings do not come up to their expectations, or if they are in any way dissatisfied with the instruction and service received, or if they do not feel capable of entering the work. Respondent Higbe, however, testified that such refunds are granted

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only under exceptional circumstances and the record reveals one instance where a graduate had opened an office which had later been closed by State authorities, and no refund was made. These representations are therefore false and misleading.

PAR. 8. Respondents further represent in advertisements that no license is required by persons practicing the methods of diagnosis, treatment and correction which the respondents undertake to teach students through the course in Pedopractic. These representations are misleading and false in that licenses are required by the great majority of the States of the United States as a condition precedent to the diagnosis, treatment and correction of disorders and deformities of the human foot by persons who hold themselves out as qualified so to diagnose, treat and correct.

PAR. 9. Respondents through respondent American University in advertisements circulated throughout the United States offer for sale and sell a correspondence course in "Physiotherapy", by means of which they undertake to teach by mail the purchasers and prospective purchasers thereof to diagnose, treat and relieve human ailments by manual physical means and by methods of mental suggestion. The court in Physiotherapy includes sections devoted to physiological therapeutics, mechanotherapy, nature cure, spinal adjustment, and suggestive therapeutics, and includes the basic sciences of anatomy, psychology, pathology, symptomatology and diagnosis. The material comprising this course consists of 54 lessons each varying from the other in length from 3 to 28 pages and averaging 9 pages, in part printed in booklets 5 inches wide by 7 inches long, the remainder being typewritten or mimeographed on one side of sheets of paper 8½ inches by 11 inches, together with motion picture films, a projector and a series of charts, all of which are sold and delivered to the student purchaser. The average graduate finishes the course in 8 or 9 months. There is no time fixed by the respondents within which the course must be completed. The price of the course is \$127.50 cash or \$150 in monthly installments of \$15 each. More than 1,200 students were taking the course in July, 1932. Approximately half of the persons enrolling for the course complete it. When sold, respondents cause the materials and commodities comprising said course to be transported from the city of Chicago in the State of Illinois, into and through various other States of the United States to the student purchasers thereof.

PAR. 10. Through their advertisements aforesaid respondents in the course and conduct of their business, represent that graduates in this course of Physiotherapy can have large clienteles, big lucrative practices and amazingly big incomes. They further represented

that many physiotherapists earn from \$3,000 to \$5,000 a year; that there is no other profession, vocation or occupation offering such possibilities of immediate returns in the way of increased incomes, professional recognition, and better social standing. They have further represented that almost immediately after graduation the American University student can earn a larger income than he made before taking the course; that millions of patients demand the treatment but that only a few thousand are qualified to serve them, and that the big demand entirely eliminates the long waiting period so common to other professions. The evidence shows that respondents have no knowledge of any graduate of their course in Physiotherapy who is earning such large sums of money in the practice of the profession, that there is no great demand for physiotherapists, and that there is a much smaller demand for physiotherapists trained only in a correspondence school. The Commission finds that respondents' representation relative to what their graduate physiotherapists have earned and relative to the existing demand for their services, are so greatly exaggerated as to be false and misleading to prospective student purchasers.

PAR. 11. Respondents further represent that the American University will refund to students every cent paid without red tape or delay if the earnings obtained through the practice of Physiotherapy do not come up to the student's expectations. Respondent Higbe, however, testified that such refunds are granted only under exceptional circumstances and the record reveals one instance where a graduate had opened an office which had later been closed by State authorities, and no refund was made. This representation is false and misleading.

PAR. 12. Respondents further represent that students in and graduates of their course in Physiotherapy may qualify as physiotherapists and establish themselves in a profession, the services of which are demanded by millions of patients. They further represent that the American University home study course in Physiotherapy will qualify the student to successfully practice Physiotherapy. These representations are misleading and false in that the majority of the States of the United States have licensing laws which require persons diagnosing and treating human ailments, as students in and graduates of the American University course in Physiotherapy would purport to do, to obtain a license as a condition precedent to such practice. In the great majority of cases students in or graduates of the American University course in Physiotherapy would not be acceptable as candidates for such a license.

PAR. 13. The aforesaid acts and things done and the representations made by the said respondents have the capacity and tendency

to mislead and deceive the public, student and prospective student purchasers into the beliefs that the said respondents are offering for sale and selling courses of instruction in Pedopractic and Physiotherapy which qualify students and graduates of such courses to earn large sums of money in the practice thereof; that the courses are sold under a "money-back" arrangement by which the money paid the respondents will be refunded at the desire of the students; that students in and graduates of the courses are qualified to practice the things taught in the courses in any State of the United States without examination or license, and acting upon those beliefs and relying upon the aforesaid representations a large number of the public has applied for and subscribed to respondents' said courses of instruction in preference to the courses of instruction offered by their competitors, who do not make such false, exaggerated, misleading and deceptive statements, and representations, thereby diverting trade from such competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents and testimony having been taken and the Commission having made its findings as to the facts and its conclusion that respondents have been and are now violating Section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents American College, a corporation, American University, a corporation, and Denton N. Higbe, and the agents, representatives, servants and employees of each of them, in connection with the sale, or offering for sale, of courses of instruction in interstate commerce, or in the District of Columbia, cease and desist as follows:

(1) From representing expressly or by implication that the usual and ordinary earnings of students or graduates of the Amer-

¹As modified, as to par. 4, on March 21, 1934.

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ican College course in Pedopractic or of the American University course in Physiotherapy will be from \$200 to \$1,500 per month or more, or that there is no long waiting for a big practice, and from misrepresenting in any way whatsoever the earnings of students or persons who are taking or have completed the said courses of instruction,

(2) From representing expressly or by implication that the respondents or any of them will refund to students or graduates of the American College course in Pedopractic, or of the American University course in Physiotherapy, any part or all of the money paid as tuition upon the happening of certain conditions, unless and until respondents adopt the practice of actually making such refunds under those conditions,

(3) From misrepresenting concerning the licensing requirements for the practice of "Pedopractic" or physiotherapy in force and effect in the various States of the United States,

(4) From misrepresenting by exaggeration or otherwise the existing demand for graduates of respondents' various courses, and

It is further ordered, That each of the said respondents within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
ACME SHELLAC PRODUCTS CORPORATION

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

Docket 2082. Complaint, Dec. 8, 1932—Decision, Nov. 6, 1933.

Where a corporation engaged in the manufacture and sale of shellac, shellac substitutes and other similar products, adopted the trade name "Shea-Lac" for shellac substitute, and sold said product in cans upon which had been stamped the words "Guaranteed 5 lbs. cut, an Acme Product, 'White Shea-Lac'", together with the words, in prominent lettering, "Acme Shellac Products Corporation", and, after a number of years and on containers intended for distribution and sale in interstate commerce, the words "shellac substitute", so lightly or carelessly stamped on some cans that they could not be seen after most careful scrutiny except by one who knew they had been placed thereon, and so inconspicuously stamped in others, as to be practically illegible; with capacity and tendency to mislead and deceive the purchasing public into believing said substitute to be the genuine and more costly shellac, and to induce the purchase thereof, and divert trade from and otherwise injure competitors, including manufacturers of the substitute product, who plainly and conspicuously mark the containers thereof as such:

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.

Frank & Julius Zizmor, 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, a New York corporation engaged in the manufacture of varnishes and sale and distribution thereof in the various States; and with principal place of business at Astoria, Long Island, N.Y., with misbranding or mislabeling in violation of the provisions of Section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent labels certain of its products sold in interstate commerce "Guaranteed Five Pound Cut Acme Product White Shea-Lac To be reduced with Alcohol Manufactured by Acme Shellac Products Corp.—New York, N.Y.—Boston, Mass."; notwithstanding the fact that said products so labeled are not made of genuine shellac gum dis-

solved in alcohol, the constituent elements or formula of shellac, as recognized and understood by the trade and purchasing public; with capacity and tendency to mislead and deceive the public and induce the purchase of such products in reliance upon the erroneous belief induced by such misrepresentations and statements, and to divert trade from and otherwise injure competitors, and/or with the effect of so misleading, deceiving, diverting, and injuring; 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, Acme Shellac Products Corporation, 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, hearings were 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 complaint, answer, testimony and evidence received, and brief in support of the allegations of the complaint, 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, Acme Shellac Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at Long Island City in said State, and said respondent, for a number of years last past has been and is engaged in the manufacture of shellac, shellac substitutes, and other similar products, and in the sale and distribution of said products to purchasers thereof located in the various States of the United States other than the State of New York. During the aforesaid period respondent caused said shellac, shellac substitutes and other similar products when sold to be shipped from its place of business in Long Island City, in the State of New York, 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 re-

spondent was at all times herein referred to in competition with other corporations, and with firms, partnerships and individuals likewise engaged in the manufacture and sale and distribution in interstate commerce of shellac, shellac substitutes and other similar products.

PAR. 2. In the course and conduct of its aforesaid business respondent manufactured and sold both shellac and shellac substitutes. Shellac is made by dissolving in alcohol a shellac gum, imported from India. Shellac substitute is made by dissolving in alcohol an entirely different gum, called Manila gum. The Indian or real shellac gum is much more expensive than Manila gum, because of which, at times, real shellac has sold for more than twice as much as shellac substitutes, including the substitutes made by respondent. Even during the recent period of low prices, when the spread in price between the two products was considerably less than formerly, the pure or real shellac has sold for at least 25 percent more than shellac substitute. Shellac substitutes are used for the same or similar purposes as are real shellacs, and said substitutes are sold both in competition with shellac and with one another.

PAR. 3. Respondent was incorporated under the laws of the State of New York in 1923. It adopted at once as a trade name for its shellac substitute the word "Shea-Lac" and registered said name. Said shellac substitute was sold and distributed by respondent in cans upon which respondent had stamped the following wording:

Guaranteed 5 lbs. cut, an Acme Product "White Shea-Lac."

The name of respondent corporation, "Acme Shellac Products Corporation, also appeared in prominent lettering upon said cans. The sale and distribution of said shellac substitute was continued by respondent in receptacles so labeled from 1923 until 1930. Sometime during the year 1930 the respondent had stamped upon certain of its cans containing its said shellac substitute, intended for distribution and sale in interstate commerce, underneath the word "Shea-Lac" and in letters considerably smaller and less conspicuous than the said word "Shea-Lac" the words "shellac substitute." These words, "shellac substitute", were stamped upon said cans in such manner that they could easily be erased or obliterated.

Upon one of the said cans sold by respondent in interstate commerce in the State of New Jersey and purchased at a retail establishment in Newark, N.J., in July, 1932, the words "shellac substitute" had been stamped so lightly or carelessly that they could not be seen except after a most careful scrutiny by one who knew that they had been placed on the can. Upon others of respondent's cans in use since 1930, introduced as exhibits in this proceeding, the words

"shellac substitute" were so inconspicuously stamped as to be practically illegible. Respondent did not stamp, even in the inconspicuous and temporary manner heretofore described, the words "shellac substitute", upon any cans containing its shellac substitute, unless said cans were intended for shipment in interstate commerce.

PAR. 4. Other manufacturers of shellac substitutes, whose products are sold in the same trade area as are those of respondent, plainly and conspicuously mark on the containers of their said substitutes a statement that the products are shellac substitutes. One of said competitors labels its shellac substitute under the brand name or designation of "White Duralac", which words, as well as the accompanying words "a shellac substitute", appear plainly and conspicuously upon its containers.

PAR. 5. The use of the word "Shea-Lac" as a brand name or designation of a shellac substitute, unless accompanied by a word or words equally conspicuously and permanently stamped upon the vessels containing said substitute clearly indicating that such product is a substitute for genuine shellac, has the capacity and tendency to mislead and deceive the purchasing public into the belief that said shellac substitute is genuine shellac, and has the capacity and tendency to induce the purchase of respondent's shellac substitute and to divert trade from and otherwise injure respondent's 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 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",

Order

18 F.T.C.

It is now ordered, That respondent, Acme Shellac Products Corporation, and its officers, 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 shellac, shellac substitutes, and other similar products, do cease and desist directly or indirectly from

Using the word "Shea-Lac", or any other word or words which in appearance or sound simulate the word shellac, alone or in conjunction with any other word or words to designate a product which is not made from shellac gum dissolved in alcohol or to designate a product in which shellac gum is not the principal and predominant element unless said word "Shea-Lac" or said other word or words be accompanied by the word "substitute", or by other apt and adequate words, in equally permanent and conspicuous lettering, clearly indicating that such product is a substitute for genuine shellac.

It is further ordered, That respondent, Acme Shellac Products Corporation, 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 SHEPARD AND P. WIEGLER, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE OF PROSPERITY HAT COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2044. Complaint, June 6, 1932—Order, Nov. 7, 1933*

Consent order requiring respondents, their agents, etc., in connection with the sale or offer of hats in commerce among the several States of the United States and in the District of Columbia, to 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").

Mr. G. Ed. Rowland for the Commission.

Mr. Henry Duke, of Astoria, Long Island, N.Y., 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 Jacob Shepard and P. Wiegler, copartners doing business under the trade name and style of Prosperity 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, Jacob Shepard and P. Wiegler, are copartners doing business under the trade name and style of Prosperity Hat Co., having their office and principal place of business at 25 East Fourth Street, in the City of New York, State of New York, where they have been for more than 1 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 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 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 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 sub-

stantially 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, in the mistaken belief that they are purchasing new and unused hats, and tend to and do 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. 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".

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 6th day of June, 1932, issued its complaint against Jacob Shepard and P. Weigler, copartners, doing business under the trade name and style of Prosperity Hat Co., respondents herein, in which complaint it is alleged 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 July 13, 1932, respondents filed their answer to said complaint. On September 14, 1933, said respondents filed a second answer herein wherein they stated that they do not desire to contest the proceeding, and consent that the Commission may make, enter, and serve upon them an order to cease and desist from the violations of law alleged in the complaint, in accordance with the provisions of Section 2, Rule III, of the Rules of Practice of the Commission, and the Commission having accepted the second answer in lieu of the former one theretofore filed, and being fully advised in the premises,

It is now ordered, That the respondents Jacob Shepard and P. Weigler, copartners, doing business under the trade name and style of Prosperity Hat Co., their agents, representatives, servants, 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 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.

Memoranda

The Commission as of the same date issued similar consent orders in the following 6 cases, in the first 4 of which complaints issued as of June 6, 1932, and in the last 2 of which complaints issued as of July 12, 1932, and November 29, 1932, respectively:¹

Joseph A. Villone, doing business under the trade name and style of Excelsior Hat Works. (Docket 2046); Jacob Schachnow, doing business under the trade name and style of Modern Hat Works. (Docket 2047); Morben Hat Works, Inc. (Docket 2048); Harlin Hat Co. (Docket 2049); Max Rothman. (Docket 2061); Frank Krinetsky, doing business under the trade name and style of Frank's Hat Co. (Docket 2075).

¹ Allegations of the complaints appear to be similar with the exception of the fact that respondent Max Rothman apparently renovated all hats purchased, instead of selling some "as is" to jobbers and wholesale dealers.

Complaint

IN THE MATTER OF
H. PERILSTEIN, INC.

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

Docket 2112. Complaint, Aug. 17, 1933—Order, Nov. 14, 1933

Consent order requiring respondent, its agents, etc., in connection with the sale or offer for sale in interstate commerce or in the District of Columbia of window glass, to cease and desist from shipping to any purchaser thereof, panes of window glass of grade or quality "B" as and for window glass of the grade and quality "A" or from representing in any manner to said purchasers that common window glass of the grade and quality "B" is of the grade and quality "A."

Mr. PGad B. Morehouse for the Commission.
Englander, Cohen & Korn, 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 H. Perilstein, Inc., a corporation, hereinafter referred to as respondent, has been 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, H. Perilstein, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business in the city of Philadelphia, State of Pennsylvania. For more than two years last past it has been engaged in trading as a jobber of window glass, trading in its corporate name and also through its branches or subsidiaries under the name and style of "Scranton Plate Glass Company" in the city of Scranton, State of Pennsylvania, and under the name and style of "United Plate Glass Company" in the city of Pittsburgh, State of Pennsylvania. When sold respondent causes window glass to be shipped in crates from its warehouses in the State of Pennsylvania, in, through and to various other States of the United States for delivery to the purchasers thereof. In the course and conduct of its business as aforesaid respondent is and has been in direct and active competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of window glass.

PAR. 2. In the "flat" or window glass industry there are two principal grades of common window glass, to wit: "A Quality" and "B Quality." The "B" quality is inferior to the "A" quality in that it may contain more defects, more distortions, "waves", "blisters", or "burn spots." It has been the practice in the trade to attach by sticking to the panes of glass a label bearing the symbol "A" when the glass is of that quality and a label bearing no letter symbol when the glass is of "B" quality, by reason of which practice, a purchaser having no notice or knowledge thereof cannot identify a pane of common window glass as being of the "B" or inferior quality upon a casual examination thereof. The price of "B" glass is lower than the price of "A" glass to the jobber, retailer and ultimate consumer and this situation in the trade has resulted in the common practice of substituting "B" quality when "A" quality has been specified.

PAR. 3. In the course and conduct of its business as aforesaid respondent has been following the practice of selling and shipping to the purchasers thereof panes of common window glass of grade or quality "B" as aforesaid as and for window glass of the grade and quality "A" as aforesaid, and by means of tampering with and changing the markings of the manufacturer stenciled on the crates which respondent has sold and re-shipped to its customers, has deliberately represented to its purchasers that common window glass of the grade and quality "B" is of the grade and quality "A", thereby tending to deceive such ultimate purchasers to their injury and tending unfairly to divert trade from respondent's competitors to respondent.

PAR. 4. On the 27th day of October, 1932, respondent caused to be shipped from its warehouse in Philadelphia a shipment of eight boxes of common window glass to the Buffalo State Hospital in the city of Buffalo in the State of New York, sale of said glass having been made to the said purchaser by respondent through its agent after competitive bidding upon specifications calling for "A" quality window glass. Of said eight boxes five contained window glass of grade "B" quality. On said boxes or crates the manufacturer's grade marking had been removed by scraping or planing and the marking indicating grade "A" substituted therefor.

PAR. 5. On the 18th day of November, 1932, respondent caused to be shipped from its warehouse in Philadelphia, a shipment of five boxes of common window glass to the Buffalo State Hospital in the city of Buffalo in the State of New York, sale of said glass having been made to the said purchaser by respondent through its agent

after competitive bidding upon specifications calling for "A" quality window glass. All five boxes contained window glass of grade "B" quality. On said boxes or crates the manufacturer's grade marking had been removed by scraping or planing and the marking indicating grade "A" substituted therefor.

PAR. 6. The acts and things above alleged to have been done, the substitution as aforesaid, the false and misleading representation thereby made by respondent and each of them, are to the prejudice and injury of the public and to competitors of respondent, have the tendency unfairly to divert trade from respondent's competitors to respondent, 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 respondent's answer filed herein pursuant to paragraph 2 of Rule III of Practice and Procedure of the Commission which said answer refrains from contesting the proceeding, and the Commission being fully advised in the premises,

It is now ordered, That the respondent, H. Perilstein, a corporation, and its agents, representatives, servants, and employees and each of them, in connection with the sale or offering for sale in interstate commerce or in the District of Columbia of window glass, cease and desist from shipping to any purchaser thereof, panes of window glass of grade or quality "B" as and for window glass of the grade and quality "A" or from representing in any manner to said purchasers that common window glass of the grade and quality "B" is of the grade and quality "A."

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

IN THE MATTER OF

JOSEPH H. McGRANAHAN, DOING BUSINESS UNDER
THE TRADE NAME MONTECATINI DISTRIBUTING
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 2090. Complaint, Feb. 18, 1933—Decision, Nov. 27, 1933

Where a corporation had long engaged in the sale of certain Italian salts as sole representative and distributor in the United States of the Italian "Societa Regie Terme di Montecatini", agency of the Italian Government in extracting salts from the famous Italian Montecatini Mineral Springs (including the "Tamerici" spring), and said corporation had done a constantly increasing business in such salts, which had increased in public favor and demand in the United States, and were packed, in Italy, in bottles (1) labeled "Sali Cristallizzati Di Montecatini (Royal Seal) 'Tamerici' (T.M.C.) (in monogram) Societa Regie Terme Di Montecatini", together with the words "Montecatini Sale Tamerici" blown therein, and (2) individually contained in cartons bearing the aforesaid label, together with the words, "Massime Onorificenze A Tutte Le Esposizioni"; and thereafter an individual engaged in the purchase from domestic laboratories of synthetic salts of the same appearance as those distributed by said corporation,

Adopted the trade-name "Montecatini Distributing Co." and sold his said product packed in bottles and containers which were marked and labeled, and were of the same size, shape, color and general appearance as the aforesaid, including the claim that contents had received highest honors at all expositions, English equivalent of the aforesaid Italian legend;

With effect of deceiving the purchasing public into believing that said synthetic salts, not extracted from spring water of any character, were those extracted from the Montecatini mineral springs as sold by said corporation, and with capacity and tendency so to do, and with resulting substantial loss of business to said corporation through diversion of trade from it to said individual, and with tendency and capacity to injure the business of competitors dealing in salts extracted from natural spring water and that of those dealing in salts of laboratory manufacture, and to divert trade from such various competitors to said individual:

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. Alfred M. Craven 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 at Alliance, Ohio, in the business of

purchasing from manufacturers salts used for purgatives, laxatives, and regulatory remedies for humans and animals, and selling said salts to druggists and other dealers throughout the United States, with simulating containers and labels of competitor, 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, sells salts dealt in by it as aforesaid, which are sulphate of soda of laboratory manufacture, and not extracted from spring water of any character, though identical in appearance with the salts extracted for a long number of years from certain mineral springs located in Tuscany, Italy, in the locality of Montecatini, and sold and distributed in the United States for a number of years by the Banfi Products Corporation, contained in bottles of the same size, shape and contour as those of said corporation, together with the same words, i.e., "*Montecatini Tamerici*", blown therein, and with photographic copies of the labels of said Banfi Products Corporation on said bottles and on the cartons containing said bottles,¹ "so as to simulate in many and essential particulars and to represent that respondent's product is the identical one sold and distributed by the Banfi Corporation."

Said representations and descriptions of his product by respondent individual, as charged, "are false and have the capacity, tendency, and effect of misleading and deceiving purchasers and of inducing the purchase of respondent's product in and on account of the belief that it is extracted from the waters of Banfi Products Corporation, and thus, to divert trade from respondent's competitors to the 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 ORDERS

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 February, 1933, issued its complaint against the respondent, Joseph H. McGranahan, doing business under the trade name "Montecatini Distributing

¹ Label in question, as set forth in the complaint, follows:

Sali Cristallizzati
MONTECATINI
TAMERICI
Societa Regie Terme
di
Montecatini

Co.", charging him with the use of unfair methods of competition in commerce in violation of the said act. Respondent having entered his appearance and filed his answer, hearings were had before a trial examiner heretofore duly appointed, testimony was heard, and evidence was received in support of the charges of the complaint, the respondent not appearing at this hearing. Hereafter this proceeding came on for final hearing, 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, Joseph H. McGranahan, doing business under the trade name and style of "Montecatini Distributing Co.", is engaged at Alliance, Ohio, in the business of purchasing from manufacturers or laboratories in the United States, salts used for purgative, laxative, and regulatory medicines for humans and animals, and in the sale thereof in interstate commerce to druggists and other dealers throughout the United States. Respondent causes said salts when sold to be shipped and transported in interstate commerce from his said place of business at Alliance, Ohio, into and through other States of the United States, to the purchasers thereof at their respective points of location. Respondent in the course and conduct of his said business is and has been in competition with other firms and corporations located in the United States, engaged in the sale and distribution throughout the United States in interstate commerce of salts, sold and used for the same purposes as the products of the respondent.

PAR. 2. Among respondent's competitors are many who sell and distribute salts extracted and crystalized from the waters of natural mineral springs. Among competitors of this class is the Banfi Products Corporation, organized and doing business under the laws of the State of New York. The Banfi Products Corporation is now and for many years past has been engaged as the sole representative and distributor in the United States of an Italian corporation known as "Societa Regie Terme di Montecatini", which last named corporation is and has been, as an agency of the Italian Government, engaged in extracting salts from certain mineral springs located in the locality known as Montecatini, in Tuscany, Italy. The springs thus located are known as Montecatini Mineral Springs. For many years salts have been extracted from the waters of the Montecatini Mineral Springs by the said Italian Government, and have been

sold and distributed in the United States by the said Banfi Products Corporation. The business done in the sale and distribution of such salts by the Banfi Products Corporation has constantly increased and the said salts have increased in public favor and demand, especially among the inhabitants of the United States who are of Italian birth or descent, and annual sales thereof are about \$300,000.

The salts sold by respondent describing himself as doing business as "Montecatini Distributing Co." are sulphate of soda of laboratory manufacture, not extracted from spring water of any character. They are, however, identical in appearance with the salts distributed by the Banfi Products Corporation as above set forth.

PAR. 3. The salts distributed by the Banfi Products Corporation are packed in Italy in bottles which are in turn packed in individual cartons.

The cartons in which the true Montecatini salts are packed and offered for sale are approximately $4\frac{1}{8}$ inches high by $1\frac{3}{4}$ inches thick. At the top of both faces of the said carton appear the words:

Massime Onorificenze

A Tutte

Le Esposizioni

and immediately under these words, on a yellow background, appears the label, containing the following words:

Sali Cristallizzati

DI

Montecatini

(Royal Seal)

"Tamerici"

(T.M.C.) (in monogram)

Societa Regie Terme

DI

Montecatini

The first statement means in the English language that the product has taken honors and awards at all expositions. The Royal Seal referred to and which cannot be reproduced here is the seal of the Italian Government, and the word "Tamerici" refers to one of the six famous springs of Montecatini, from the waters of which spring the salts are extracted. The bottle enclosed in said carton and in which the crystals of salts are contained also had upon its face the same identical label above set forth, and has blown into it the words

Montecatini

Sale

Tamerici

PAR. 4. The respondent packs its product in bottles of the same size and contour as those used by the Banfi Products Corporation, which bottles he packs in cartons of the same size and color as those used by the Banfi Products Corporation. There is also blown into the bottles used by respondent the inscription

Montecatini

Sale

Tamerici

and on the cartons and bottles used by the respondent is the same identical label, probably procured by photographic process, as used by the Banfi Products Corporation. Respondent also by another label affixed to his cartons announces that his salts have received honors at all expositions.

PAR. 5. The cartons and bottles used by the respondent are identical in size, shape, color, and general appearance with the cartons and bottles used in the packing of the Montecatini Salts sold by the Banfi Products Corporation. The use of the word "Montecatini" in the trade name, and on the packages and bottles used by the respondent, and the simulation of the label and dress of the packages and bottles as described in paragraphs 4 and 5 hereof have the tendency and capacity to deceive the purchasing public and have deceived the purchasing public into the belief that the synthetic salts sold by respondent are the salts extracted from the mineral springs of Montecatini, Italy, as sold by the Banfi Products Corporation. The sale of salts of laboratory manufacture by respondent as and for the salts extracted from the natural mineral springs of "Montecatini" and sold as such by the Banfi Products Corporation has resulted in a substantial loss of business to the said corporation by the diversion of trade from the said corporation to the said respondent.

The use by respondent of the false descriptions and representations mentioned in paragraphs 4 and 5 has the tendency and capacity to injure the business of respondent's competitors, both those competitors who sell salts extracted from natural spring water and those who sell salts of laboratory manufacture and to divert trade from both classes of respondent's competitors to the respondent.

CONCLUSION

The practices of the said respondent under the conditions and circumstances stated in the foregoing findings are to the prejudice of the public and respondent's competitors, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An

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Order

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 the respondent, the testimony and brief filed, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled “An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”,

It is now ordered, That the respondent, Joseph H. McGranahan, in connection with the sale or offering for sale of salts in interstate commerce between and among the various States of the United States, and in the District of Columbia, do cease and desist from:

(1) Using the word “Montecatini” in his trade name or upon cartons, bottles, or other containers.

(2) Using the corporate name “Societa Regie Terme Di Montecatini” upon the bottles or other containers of his product or in any of his advertising, or in any manner representing that said corporation has any connection whatsoever with the product sold by him.

(3) Representing in any manner that the salts sold by him is extracted or crystallized from the waters of the springs of Montecatini or from the water of any spring whatsoever.

(4) Using on his labels or otherwise at all the seal of the Italian Government.

(5) Advertising in any manner that his salts has received awards at any exposition.

(6) Simulating the packages, labels, or any advertising matter of the Benfi Products Corporation.

It is further ordered, That the respondent shall within 30 days after the service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Complaint

18 F.T.C. -

IN THE MATTER OF
BENJAMIN HALLMAN, DOING BUSINESS AS RELIABLE
SUIT CASE COMPANY

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

Docket 2109. Complaint, July 26, 1933—Order, Dec. 9, 1933

Consent order requiring respondent, in connection with the sale and offer of luggage in interstate commerce, to cease and desist from labeling, stamping or otherwise advertising luggage manufactured in whole or in part from split leather, as being manufactured from genuine leather, and from in any manner indicating that the material used in the manufacture is other than split leather.

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 Benjamin Hallman 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, Benjamin Hallman, is now and has been for several years last past doing business in the city of New York under the trade name of Reliable Suit Case Co. The business of respondent is that 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 in New York into and through various States of the United States to purchasers thereof at their respective points of location. In the course and conduct of his said 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 covered with leather made from the outside or topside of sealskin or cowskin after same has been separated or split from the flesh side of the skin. Such leather is described by makers of luggage and generally known by manufacturers, tanners, dealers, and the purchasing public as "seal" or "genuine seal", "cowskin" or "genuine cowskin", as the case may be. The luggage covered by said skins is also known to the trade and usually branded or tagged by the manufacturer as "top grain cowhide" or "top grain seal", as the case may be. When said competitors use as covering the leather manufactured from the flesh side of the skin, said leather as well as the luggage covered by it is ordinarily described, labeled and tagged by said manufacturers as "split seal" or "split cowhide", as the case may be. The split leather is very much inferior in quality, durability, and price to the top grain or genuine leather 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 the covering of which is the material mentioned in paragraph 2 hereof as split leather, both seal and cowskin being used. This material is treated, embossed and finished by said respondent so as to imitate the genuine leather made from the top grain of cowskin and sealskin and in some cases the split cowskin leather is treated, embossed and finished so as to resemble genuine seal. Respondent by means of stamps, tags and other markings affixed to said luggage made of said split leather describes said luggage in the case of cowhide as "genuine cowhide leather" and in the case of seal as "genuine sealskin." Said descriptions made on or attached to said luggage reaches the public through the retail merchants and is used by said merchants in advertising and selling such spurious luggage to the public.

PAR. 4. Said descriptions, labels, and brandings made by respondent as to his merchandise are false and fraudulent in that the material described is not "genuine cowskin" or "genuine seal" as such descriptions are commonly understood by the purchasing public. The use of said descriptions, markings and representations has the capacity and tendency to deceive the purchasing public and induce purchasers to buy luggage thus described in and on account of the belief that the said luggage is made of genuine or top grain leather.

The said false brandings and markings also have the capacity and tendency unfairly to 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 Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 26th day of July, 1933, issued and thereafter served its complaint against the respondent, Benjamin Hallman, doing business as Reliable Suit Case 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, and thereafter, tendered to the Commission, for filing, a substituted answer, withdrawing the original answer, said substituted answer reading as follows:

The respondent, Benjamin Hallmann, doing business as Reliable Suit Case Co., having withdrawn his answer heretofore filed, for a substituted answer to the complaint of the Federal Trade Commission, states, that respondent refrains from contesting this proceeding and consents that the Commission may make, enter, and serve on the respondent an order to cease and desist from the violations of 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 substituted answer of the respondent be filed, and that the respondent, 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 leather as being manufactured from genuine leather, and from in any manner indicating that the material used in the manufacture is other than split leather.

Complaint

IN THE MATTER OF
NATIONAL SILVER COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2080. Complaint, Dec. 5, 1932—Order, Dec. 16, 1933*

Consent order requiring respondent, its officers, etc., in connection with the advertisement, offer or sale in interstate commerce and in the District of Columbia of scissors imported from Germany, with the stamp and brand "Royal Brand—Solid Steel—Germany", and with a carbon content of not more than 0.095 percent, to cease and desist from representing the same as solid steel, either by use of the words "steel" or "solid steel" or other words which convey the same idea.

Mr. G. Ed. Rowland for the Commission.

Brill, Bergenfeld & Brill, 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 National Silver Company, a corporation, 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, National Silver Company, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 61 West Twenty-third Street, in the city of New York, State of New York, where it has been for more than one year last past, engaged in the sale of silverware, novelty ware and cutlery to wholesale and retail dealers located in the various States of the United States. The officers of respondent are Samuel E. Bernstein, president; Philip J. Bernstein, vice president; Morton Bernstein, treasurer; and Harry Berke, secretary. Respondent causes its said articles of merchandise when sold to be transported from its said place of business in the city of New York, State of New York, through and into other States of the United States to the purchasers thereof at their

respective places of location. In the course and conduct of its said business as aforesaid, respondent is in direct and active competition with other persons, partnerships, and corporations engaged in the sale and transportation of silverware, novelty ware and cutlery in commerce between and 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 is now, and has been for more than one year last past, engaged in selling to wholesale and retail dealers located throughout the various States of the United States, among other articles of merchandise, scissors which are stamped and branded with the words "Royal brand—solid steel—Germany" and "Royal brand—solid steel." In catalogs which respondent causes to be printed, and distributes to wholesale and retail dealers throughout the several States of the United States for the purpose of soliciting business, it describes the said scissors as "forged solid steel" and "Royal brand—solid steel."

PAR. 3. Steel is an alloy of iron and carbon, and the grades of steel used in the manufacture of cutting tools of various kinds contain a minimum amount of carbon which is necessary to make a proper cutting edge. Low carbon steel is not satisfactory for a cutting tool. The scissors sold by respondent, stamped and branded as set forth in paragraph 2 herein, contain too small an amount of carbon to entitle said scissors to be properly labeled "solid steel", as such term is generally applied in the trade to cutting tools.

PAR. 4. The statements and representations 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 scissors sold by respondent in the mistaken belief that said statements and representations are true, and tend to and do unfairly divert trade to respondent from competitors who are engaged in the sale of truthfully labeled scissors 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."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress, approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, National Silver Company, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. With the complaint there was served upon respondent a copy of the Commission's Rules of Practice. Said Rules of Practice with respect to answers provide, among other things, as follows:

III. ANSWERS

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceedings, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that the 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 respondents.

Whereupon on January 25, 1933, the respondent entered its appearance and filed its answer to said complaint. Subsequently, to wit, on October 9, 1933, the respondent filed its amended answer, in which it consented that the Commission might make, enter and serve upon it an order to cease and desist from the violations of law alleged in the complaint.

Whereupon, pursuant to its Rules of Practice, the Commission finds that said amended answer is an admission of all the allegations of the complaint, and a waiver of hearing thereon and authorizes the Commission without trial, without evidence and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violations of law alleged in the complaint. The Commission being fully advised in the premises,

It is now ordered, That the respondent, National Silver Co., its officers, agents, representatives, and employees, in connection with the advertising, offering for sale or selling in commerce among the several States of the United States, and in the District of Columbia, of scissors, described in the complaint herein, being scissors imported from Germany stamped and branded with the words "Royal Brand—

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Solid Steel—Germany”, said scissors having a carbon content of not more than 0.095 percent, cease and desist from representing said scissors as solid steel, or representing that the said scissors are made from solid steel, either by the use of the words “steel” or “solid steel”, or other words which convey the same idea.

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

Complaint

IN THE MATTER OF

DELSON CHEMICAL CO., 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 2077. Complaint, Dec. 3, 1932—Decision, Dec. 27, 1933

Where a corporation engaged in the manufacture and sale of dog medicines, represented or advertised in its "Kennel Manual" that "the modern method of treating disease is to remove the cause" and that "removal of germs, acids, ferments, and other impurities from the system is now possible by the aid of chemicals", and that there had resulted "a new science of Chemotherapy", and knowledge "now made available for the treatment of diseases of the dog", and included among such diseases, for treatment and cure through internal administration of its "Delcreo" preparation, and the asserted germicidal and other beneficial effects thereof, so administered, abscesses, asthma, fits, distemper, pneumonia, rheumatism, and vomiting attendant upon black tongue;

The facts being that said preparation, thus given, did not destroy bacteria or germs, or have any effect thereon or constitute a preventative treatment, and was not a cure or effective remedy in the treatment of said ailments, did not remove the causes thereof, was not effective, as represented, in causing cessation of paroxysms in asthma, was not an efficient treatment for pneumonia, rheumatism, or black tongue, and was not curative of any of the diseases mentioned in said manual;

With capacity and tendency to deceive the purchasing public into believing said preparation to be a germicide which, given internally, will kill germs and bacteria and destroy the causes of the various diseases for which prescribed, and induce purchase thereof by the public in and on account of said erroneous belief, and thus injure the business of competitors and divert trade from them to it:

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.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture of proprietary dog medicines, and in the sale thereof to druggists, operators of dog kennels and pet shops, and to the public generally throughout the United States, and with principal place of business in New York City, with advertising falsely or misleadingly as to

qualities or properties 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, represents through its so-called "Delcreo Kennel Manual" that its "Delcreo" preparations apply the new science of chemotherapy to diseases of the dog and offer effective remedies and cures therefor through removing germs, acids, ferments, and other impurities from the system, and thus removing the causes of the diseases involved, and that its principal preparation, "Delcreo" when given or taken internally, as directed, constitutes, by reason of its germicidal and antiseptic effect or otherwise, adequate and effective treatment and cure for abscesses, asthma, distemper, fits, pneumonia, rheumatism, and black tongue; the facts being that the preparation recommended for the aforesaid ailments, as above set forth, and composed chiefly of creosote, calcium, soda and potash, does not have any such effect as above claimed or constitute a cure or efficacious remedy for the ailments involved, there being no drug or combination of drugs which is curative for asthma, distemper, fits, or rheumatism, and the facts being, furthermore, that its said various treatments do not, as claimed by it, remove the causes of the diseases.¹

Respondent further, as charged, represents that certain of its preparations are effective for the treatment and cure of follicular mange, and prescribes a certain course of treatment involving external application of one of its said preparations, and internal administration of the other, the facts being that the representations impliedly and indirectly made in the prescribed treatment² are false and misleading in that there is no competent and dependable external treatment for the destruction of follicular mange mites or the cure of follicular mange, and there is no internal medication for the treatment or cure of said ailment.

¹ The false and misleading directions and representations, as allegedly made by respondent and quoted in the complaint in the foregoing connection, are set forth *infra* in the findings.

² Matter in question, as set forth in the complaint, follows:

"Early diagnosis is important. Where *follicular mange* is suspected, the dog's coat should be carefully examined and the infection localized. The affected parts should be washed with a solution of five tablespoonfuls of Delcreo Soluble Sulphur Compound Bath to a gallon of tepid water and a neutral soap, or saturated with Delcreo Soluble Sulphur Compound. Then apply Delcreo Ointment to prevent the spread of the parasites. Where possible the pustules should be squeezed out before applying the ointment. This treatment should be supplemented by giving Delcreo Soluble Sulphur Compound internally four times a day. This treatment should be continued to avoid the danger of recurrence and the dog should be watched for a considerable length of time after all symptoms have disappeared."

Respondent further, as charged, recommends its Delcreo Vermifuge for brood bitches and pups,³ the facts being that the description of said preparation is misleading and deceptive in that respondent does not indicate the type of worms for which it is recommended, there being no remedy for worm infestation which is effective against all of the many types of worms which infest dogs.

Said various false and misleading representations, and each of them, as alleged, "have the capacity and tendency to deceive prospective customers of respondent and to induce the purchase of respondent's preparations by the public in and on account of the belief that the use of said preparations will serve to prevent, cure, or remedy the diseases of dogs, as claimed by respondent, and each of said claims and representations has the tendency and capacity to divert trade from and otherwise injure competitors of respondent"; all to the prejudice of the public, and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 3rd day of December, 1932, issued its complaint against the respondent, Delson Chemical Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of said act. Respondent having entered its appearance and filed its answer, hearings were had before trial examiners heretofore duly appointed, testimony was heard and evidence received in support of the charges of the complaint and in opposition thereto. Thereafter this proceeding came on for final hearing and the Commission, having duly considered the record and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

³ The advertisement or representation in question, as set forth in the complaint, follows:
"Special attention should be given to brood bitches to ensure their freedom from worms because of the danger to the litter at birth * * * Many breeders are successfully overcoming these difficulties by the proper administration of Delcreo to their brood bitches and pups. And we have prepared a Delcreo Vermifuge, especially for young pups and ailing animals whose weakened condition has made it inadvisable to administer the more powerful worm remedies."

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Delson Chemical Co., Inc., is a corporation organized and existing under the laws of the State of New York and engaged in the manufacture and sale of proprietary medicines represented to be cures and efficacious treatments for diseases of dogs. The preparations manufactured and sold by respondent's principal place of business in New York City and through the various States of the United States to the purchasers thereof at their respective places of location.

In the course and conduct of its business respondent is in competition with other persons, firms, and corporations located in the United States engaged in the business of manufacturing and/or selling in interstate commerce veterinary preparations as and for and represented to be treatments for diseases of dogs.

PAR. 2. In the promotion of the sale of its products respondent advertises the same in a pamphlet or manual widely distributed by respondent all over the United States entitled "Delcreo Kennel Manual", in which its various dog preparations termed in said manual "Delcreo Remedies" are advertised and described together with recommendations and directions for the use of same. The last edition of said manual is the 13th edition, which, having superseded the 12th edition, has been current since April, 1931.

PAR. 3. In the foreword or introduction to said manual the respondent states as follows:

The modern method of treating disease is to remove the cause. Symptomatic treatment is gradually being discarded because those drugs which relieve symptoms often retard the normal efforts of the body towards recovery. As a result, while many drugs have been abandoned, the germicides which have given definite results have been greatly improved. The removal of germs, acids, ferments and other impurities from the system is now possible by the aid of chemicals. Recognition of the value of this treatment, and the necessity of governing it by scientific principles, has resulted in a new science, Chemotherapy. This knowledge is now made available for the treatment of diseases of the dog.

This foreword represents directly and by fair intendment that the preparations thereafter named in the pamphlet when given as directed will remove the causes of the various diseases mentioned and are not merely symptomatic treatments. The foreword further represents by implication that the preparations listed following the foreword are germicides and will kill germs which are the causes of various diseases and that a new science called "Chemotherapy" is made available by said "Delcreo Kennel Manual" for the treatment of the dog.

PAR. 4. The principal preparation manufactured and sold by respondent and described in said manual is one termed "Delcreo". This preparation contains in each fluid drachm two minims of beechwood creosote and $3\frac{3}{5}$ grains combined hypophosphites of calcium, sodium and potassium in glycerine emulsion. It is specifically described in the said "Delcreo Kennel Manual" as a germicide. For example, as to the disease distemper respondent states, directs, and represents in said manual as follows (*italics supplied*):

Give Delcreo every two hours for the first two days. It is advisable to limit the nourishment for the first twenty-four hours, so that the digestive organs may be reserved for the assimilation of *the germicide*. * * * It is important that the germicide should be given regularly every two hours until the infection is under control.

The respondent also represents in said pamphlet that the treatment prescribed therein is a curative treatment, the language of the pamphlet being in that respect as follow:

Effectiveness of curative treatment.—If the proper medication is employed there are only two reasons for a fatal termination in distemper, (1) delay in applying the treatment, (2) lack of natural resistance in the dog.

PAR. 5. The respondent in directing the administration of "Delcreo" for other conditions and diseases of the dog in this pamphlet under the various headings of diseases uses the following language:

Abscesses.—The first step should be to rid the system of the infection. Give Delcreo every two hours for at least two days, then three times a day. With the destruction of bacteria the activity of the white blood cells is stimulated and the abscess may come to a head very rapidly, or other abscesses may appear until the system is rid of the infection. * * *

Asthma.—Give Delcreo every two hours in regular doses until the paroxysms have ceased, then every three hours until breathing is normal. Its use should be continued until each succeeding attack grows fainter and the paroxysms finally disappear.

Fits.—Give Delcreo tonic every three hours.

Pneumonia.—Give Delcreo every two hours. * * * In severe cases the medication should be given every hour until the temperature is reduced by one or two degrees, then continue every two hours until the cough has disappeared and the temperature is normal. Delcreo should be given three or four times a day for about two weeks after the animal has recovered.

Rheumatism.—The animal should be placed in warm dry quarters. Give Delcreo in regular dosage for at least three days. This should be followed by administering Delcreo Soluble Sulphur Compound three times a day, and this treatment should be continued until all symptoms disappear.

Black tongue.—If the dog vomits after eating or drinking, give Delcreo as in distemper, for the antiseptic effect on the digestive organs and rest the stomach for twenty-four hours.

PAR. 6. The various claims made for Delcreo and the directions for its use as mentioned in paragraphs 3, 4, and 5 hereof are false and misleading in that—

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(1) Delcreo when taken internally does not destroy bacteria or germs and is without any effect on bacteria or germs and is not a cure or efficacious remedy in the treatment of abscesses.

(2) Delcreo is not effective to cause the cessation of paroxysms and is not a competent or effective remedy in the treatment of asthma nor is there any drug or combination of drugs which is curative of asthma.

(3) Delcreo internally taken is not a germicide, nor is it a preventive treatment, nor is there any drug or combination of drugs which is curative or an effective treatment for distemper.

(4) Delcreo is not a preventive, treatment or cure for fits, nor is there any known cure therefor.

(5) Delcreo taken internally is not a germicide, is not a cure or efficient treatment for pneumonia, rheumatism, or black tongue, and is not curative of any of the diseases for which the "Delcreo Kenel Manual" directs its administration. When taken internally it is not an antiseptic, nor is it a disinfectant and is of no value in removing the causes of any of said diseases.

PAR. 7. Respondent's various statements, directions, and representations as set forth in these findings and each of them have the tendency and capacity to deceive the purchasing public into the belief that the respondent's preparation "Delcreo" is a germicide and will kill germs and bacteria and will, when given internally to the dog, kill germs and bacteria and destroy the causes of the various diseases for which it is prescribed, and to induce the purchase thereof by the public in and on account of said erroneous belief and thus to injure competitors' business and to divert trade from said competitors to respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record and the Commission having made its findings as to the facts and conclusion drawn therefrom that the

respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Delson Chemical Co., Inc., its officers, agents, and employees, in connection with the sale or offering for sale in interstate commerce between and among the various States of the United States and the District of Columbia, do cease and desist in any manner from:

Advertising or representing that the proprietary preparation called by respondent "Delcreo" is a germicide when taken internally by the dog or when so taken has any germicidal, antiseptic or disinfectant qualities or that said preparation when so taken removes the cause or is a cure or efficient treatment for any of the following diseases of dogs: distemper, abscesses, asthma, fits, pneumonia, rheumatism, and vomiting attendant upon black tongue.

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

Complaint

18 F.T.C.

IN THE MATTER OF

WOLF GURZIZKY, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF WHITE STAR HAT COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2045. Complaint, June 6, 1932—Order, Jan. 17, 1934*

Consent order requiring respondent, his agents, etc., in connection with the sale or offer of men's hats in interstate commerce and in the District of Columbia, to 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").

Mr. G. Ed. Rowland for the Commission.

Kreindler, Warshaw & Baron, 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 Wolf Gurzizky, doing business under the trade name and style of White Star 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, Wolf Gurzizky, is an individual doing business under the trade name and style of White Star Hat Co., having his office and principal place of business at 222 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 his 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 his 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 his place of business. The poorer grade of hats are sold by respondent to his 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 tend to and do 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."

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 6th day of June, 1932, issued its complaint against Wolf Gurzizky, doing business under the trade name and style of White Star Hat Co., respondent herein, in which complaint it is alleged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said act.

On September 12, 1933, respondent filed his answer to said complaint. On January 3, 1934, said respondent filed a second answer herein, wherein he stated that he did not desire to contest the proceeding, and consents that the Federal Trade Commission may make, enter, and serve upon him an order to cease and desist from the

violations of law alleged in the complaint, in accordance with the provisions of Section 2, Rule III, of the Rules of Practice of the Commission, and the Commission having accepted the second answer in lieu of the former one theretofore filed, and being fully advised in the premises,

It is now ordered, That the respondent, Wolf Gurzizky, doing business under the trade name and style of White Star Hat Co., his agents, representatives, servants, 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.

IN THE MATTER OF
MEARS RADIO HEARING DEVICE CORPORATION

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

Docket 2079. Complaint, Dec. 5, 1932—Decision, Jan. 17, 1934

Where a corporation engaged in the sale of a device, and oil for use in conjunction therewith, for the treatment and cure of the partially and totally deaf and those afflicted with head noises, in competition with many meritorious varieties of hearing devices, and devices for relief of such noises and symptoms of deafness, and for treatment of the deaf, and with many ear oils, advertised said device through newspapers of general circulation, magazines, letters, and circulars as a new invention, which exercises the ossicles and muscles of hearing until they become strong enough to work, and relieves deafness and head noises by removing the cause, helping to "restore your natural hearing" and affording "positive and complete relief from head noises", and with a record of accomplishing such results for many, including restoration of hearing after 20 years of extreme deafness, and represented that said oil, assertedly used theretofore by a noted New York physician with remarkable success, and recognized by doctors, had alone relieved many cases of deafness, and claimed through testimonial advertisements that use of said device and oil had relieved users of deafness, had enabled a person deaf for 25 years, to hear the "talkies", and would enable a person born deaf and dumb to acquire the sense of hearing;

Facts being that such device would not cure or aid in the cure of deafness or head noises, or relieve such ailments or noises or restore natural or any hearing to deaf persons, with or without said oil, and was not a new invention, but, formerly sold under a different name, had been discovered, tested and discarded as worthless by otologists a number of years ago, use thereof was dangerous, and treatment thereby afforded, with or without said oil, was neither scientific, efficacious or proper for deafness or head noises, and aforesaid oil did not possess such therapeutic value as to aid, cure or relieve deafness or head noises and was not used or recommended by reputable or noted doctors, or given its name, as asserted, by any physician;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers, including the millions of deaf and partially deaf, and those incurably so, and receptive to anything holding out hope of slightest relief, into believing that such representations were true, and inducing their purchase of said device and oil in such belief, and of unfairly diverting trade to it from its competitors, and with effect of postponing procurement of proper and efficacious treatment, by the user, for his deafness:

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

Mr. E. J. Hornibrook for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the sale of devices, apparatus, and medicines for the treatment of those who are hard of hearing, including a device called "Mears Airosage" and a medicine called "Mears Ear Oil" (sold for use in conjunction with said device), and with principal place of business in New York City, with advertising falsely or misleadingly as to history, results and qualities of product, in violation of the provisions of Section 5 of said act prohibiting the use of unfair methods of competition in interstate commerce; in that respondent represents that said device is a new invention and one which will cure and has cured and relieved head noises and deafness, even in extreme cases such as those of people born deaf and dumb, or deaf for twenty-five years, and in that it further falsely advertises said "Mears Ear Oil" as a preparation prescribed by a noted New York physician with remarkable success, used by it and so designated with his permission, and recognized as a preparation by physicians, which alone has relieved many cases of deafness and one which, if used in conjunction with said device, affords as scientific a treatment as could be asked for a congested and deafened ear; with tendency and capacity to deceive the purchasing public and induce the purchase of its said products in reliance upon such statements and representations, and unfairly divert trade from competitors to it and otherwise injure said competitors, to their prejudice and that of the public.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 5th day of December, A.D. 1932, issued and thereafter served its complaint against the respondent, Mears Radio Hearing Device Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed an answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence taken

¹ Respondent's said statement, and representations, as alleged in the complaint in detail, are set forth in the findings, infra.

in support of the charges stated in the complaint, and in opposition thereto. Thereafter this proceeding came on regularly for final hearing and the Commission having duly considered the record and being now fully advised in the premises finds that this proceeding is in the interest of the public and 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, Mears Radio Hearing Device Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business in the City of New York, State of New York. It is now and for several years last past has been engaged in the sale of devices, apparatus, and medicines for the treatment and cure of persons who are hard of hearing, or totally deaf or afflicted with head noises; among which is a device called by respondent "Mears Airosage" and a medicine called "Mears Ear Oil". "Mears Ear Oil" is sold by respondent for use in conjunction with "Mears Airosage". These two last named products are sold by respondent in different States of the United States and when orders are received therefor, such orders are filled by respondent by packing the same in said City of New York and shipping the same, usually through the United States mails, from the said city to the purchasers thereof, many of whom reside outside the State of New York.

PAR. 2. In the course and conduct of said business respondent is in competition with individuals, copartnerships, and corporations engaged in the transportation and sale between and among various States of the United States of devices, apparatus, and medicines sold and used for the same purposes as are respondent's "Airosage" and "Mears Ear Oil".

The respondent's "Airosage" is in direct competition in interstate commerce with the hearing devices on the market, and there are many meritorious varieties of them sold in interstate commerce. Respondent represents in its advertising that the use of "Airosage" makes the use of hearing devices unnecessary.

There are also other mechanical devices sold in interstate commerce, not as a cure for deafness, but for the relief of head noises and symptoms of deafness only, which are in competition with "Airosage".

Respondent, in the sale of "Mears Ear Oil" is in competition with many ear oils and devices sold in interstate commerce for the treatment of the deaf.

PAR. 3. The device "Airosage" is operated by storage batteries. It has a cupped shaped vibrator which according to instructions is to be placed against the ear until it produces a tickling and tingling sensation in the inner ear. A hard rubber cone shaped device, called the applicator is then directed to be attached to the vibrator and inserted in the ear. Users are directed to continue this treatment for a full half minute and massage around the ear and across the throat and chin with the vibrator for a period of five minutes. Also users are directed to use another device to be attached to this vibrator for massaging the palm of the hand over the heart line thereof. This latter treatment is described by respondent as "Zone Therapy", and is represented by respondent to be efficacious in the treatment of deafness.

"Mears Ear Oil" consists of Homeopathic Oil of Mullen with twenty drops of Oil of Eucalyptus added to each pint of the oil of mullen. Users are directed to place two drops in each ear three times a week. Users are also directed to use it in conjunction with and as an aid to vibratory treatment produced by "Airosage". A month's supply of the ear oil accompanies each "Airosage Device".

Respondent sells this device for \$45 when sold alone. At this price a supply of "Mears Ear Oil" is included. Approximately 500 have been sold each year in the past two years. The device "Airosage" is also sold on a 30 days rent or trial plan whereby it and an ear phone are shipped to a prospective purchaser upon payment of \$5 and, if at the end of 30 days trial the prospect is satisfied, he may keep both devices upon further payment of \$55. In the advertisement of this trial plan the price quoted for each device, if sold separately, is \$45.

There are in the United States ten to sixteen million adults and one and one-half million children who are either totally deaf or deficient in the sense of hearing, and of these more than one and one-half million are incurable. These people are constantly and eagerly seeking something that will cure them or relieve their condition and will try out anything that seems likely to afford the slightest relief.

PAR. 4. The respondent expends in advertising its said "Airosage" and "Mears Ear Oil" from \$1,500 to \$2,000 per year.

The respondent advertises "Airosage" and "Mears Ear Oil" through the medium of magazines, letters, circulars, and newspapers having a general circulation throughout the United States, such as the Sunday American and other Hearst papers. Typical of these advertisements are the following:

1. Hearing has been restored by the use of the Airosage after twenty years of extreme deafness.

2. Many have had head noises eliminated and natural hearing restored by the use of Airosage.

3. The new invention, Airosage, helps restore your natural hearing.

4. Airosage relieves deafness and head noises by removing the cause.

5. Positive and complete relief from head noises.

6. Airosage imparts vibratory treatment that exercises the ossicles and muscles that control the hearing until they become strong enough to work.

7. A noted New York physician has prescribed Mears Ear Oil with remarkable success. He has agreed to allow us to use it and call it Mears Ear Oil. It is lubricating, healing and stimulating * * *. Unaided it has relieved many cases of deafness and is recognized by physicians. What more scientific treatment can be congested and deafened ear receive than these two wonderful healing agents when used together.

In addition to the representations hereinabove stated in paragraph 4 above, respondent has represented in testimonial letter advertisements that by the use of said Airosage and Mears Ear Oil or either of them a person deaf for twenty-five years can now "hear the talkies; that by the use of said Airosage and Mears Ear Oil or either of them deafness has left a user or users thereof; that by the use of said Airosage and Mears Ear Oil a person born deaf and dumb will acquire the sense of hearing; that the sense of hearing of a person born deaf will be acquired by a user of said Airosage and Mears Ear Oil or either of them."

PAR. 5. The statements and representations set forth in paragraph 4 are false and misleading in that "Mears Airosage", whether used in conjunction with "Mears Ear Oil" or not, is not such a device, the use of which will cure, or aid in the cure of deafness or head noises or relieve deafness or head noises or restore natural or any hearing to deaf persons; nor is the said device, "Mears Airosage", a new invention but is a device formerly sold under the name "Aurosage" and which was discovered, tested, and discarded as worthless by otologists a number of years ago; nor is such device a scientific device; nor is the treatment by the use of such device in conjunction with or without "Mears Ear Oil" scientific, efficacious, or proper treatment for deafness or head noises; and the product "Mears Ear Oil" when used with the device "Airosage" or without it does not possess such therapeutic value as to cure or aid in the cure or relief of deafness or head noises, nor is it used or recommended by reputable or noted physicians and the name "Mears Ear Oil" was given it not by a physician, but by a layman. The use of "Airosage" in the treatment of the deaf is dangerous and likely to injure the ear. The use of "Airosage" and "Mears Ear Oil" or either of them in the treatment of deafness postpones the procurement of efficacious treatment in many instances.

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The rent or trial plan of sale of "Airosage" as described in paragraph 3 hereof, when adopted by a prospective purchaser, has the tendency and capacity to postpone the procurement of proper and efficacious treatment for his deafness.

The president of respondent testified in this proceeding that the use of the testimonial and claim that "Airosage" would "help those born deaf" had been abandoned, but made no comment as to whether this statement would be resumed.

PAR. 6. Each and all of the representations as to the efficacy of respondent's "Airosage" and "Mears Ear Oil", contained in the advertising as set forth in paragraph 4, had and have a tendency and capacity to mislead and deceive the purchasers and prospective purchasers of respondent's said "Airosage" and "Mears Ear Oil" into the belief that such representations are true, and to induce them to purchase respondent's said "Airosage" and "Mears Ear Oil" in such belief and had and have the tendency and capacity to unfairly divert trade from said competitors to respondent.

CONCLUSION

The practices of 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 to be heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, the testimony and evidence, and briefs of counsel, and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondent had 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 being fully advised in the premises,

It is ordered, That respondent, Mears Radio Hearing Device Corporation, its agents, employees, and representatives, in connection with the advertising, offering for sale, and sale in interstate commerce, or in the District of Columbia, of the commodities "Airosage" and "Mears Ear Oil", or either of them, cease and desist from

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representing in any manner, including by or through the use of testimonials or endorsements, that the use of the device "Airosage" and "Mears Ear Oil" or either of them, or any similar device or medicine will cure, aid in the cure or relieve deafness or head noises or that the use of such device either in conjunction with or without "Mears Ear Oil" is scientific, efficacious or proper treatment for deafness or head noises or that "Mears Ear Oil" possesses therapeutic value in the treatment of deafness or head noises.

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

Complaint

IN THE MATTER OF

PAUL CASE

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

Docket 2091. Complaint, Feb. 24, 1933—Decision, Jan. 18, 1934

Where an individual, neither a physician nor graduate of any college or university of medicine, engaged in the sale and distribution of a medicinal product, known as "Case combination treatment", and consisting of two different kinds of tablets, based on two separate formulae, for taking as prescribed,

Made such statements in advertising his said treatment in circulars and letters sent to prospective customers by mail, as that it would drive out aches and pains of muscular and subacute rheumatism, neuralgia, sciatica, neuritis, and lumbago, constituted an amazing discovery that had brought comfort and happiness to more than 100,000 sufferers, and had brought relief to those who had endured the aches and pains of the aforesaid ailments for years, even in severe cases, with reported miraculous relief from misery suffered, and headed numerous testimonials with such captions as "Suffered For 20 Years, Had Given Up Hope, Then Tried the Case Treatment", "Discards Crutches, Sleeps All Night, Works In Garden", "Feels 20 Years Younger, Walks Without Cane, Entirely Active Again", and made numerous other statements and representations of similar tenor, facts being that the use of the two formulae would not cure or have any appreciable therapeutic value in the treatment of the aforesaid diseases;

With effect of misleading and deceiving customers and prospective customers into purchasing said product in the belief that it would produce the results claimed for it as hereinabove set forth, and with tendency and capacity so to do, and with effect of injuring, to a substantial extent, competitors selling preparations with same effect as that of products herein concerned, including those not falsely advertised as a cure for the aforesaid diseases, or in other respects, and with capacity and tendency so to injure:

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. Henry C. Lank for the Commission

Mr. H. Ralph Burton, Mr. Tench T. Marye, and Mr. Robert W. Burton, of Washington, D.C. for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale and distribution of medicines and drugs described by him as "Case Combination Treat-

ment", for the purported relief and cure of rheumatism, gout, neuritis, sciatica, neuralgia, and lumbago, and with principal office and place of business in Brockton, Mass., with advertising falsely or misleadingly as to qualities or results 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, falsely and misleadingly represents through advertisements, pamphlets, and circular letters that his said medicines and drugs are an effective cure and remedy for, or beneficial in the treatment of, muscular or subacute rheumatism, neuritis, gout, sciatica, neuralgia, and lumbago, and the aches and pains of rheumatic, neurotic or gouty condition; the facts being that "while a few of the drugs contained in respondent's medicines are sometimes employed with results more or less beneficial in certain stages of some of the above diseases or ailments, yet the said medicines or drugs will not provide adequate treatment for the above-mentioned diseases or ailments and it is false and misleading to so represent or imply."

Respondent further, as charged, represents through advertisements, pamphlets, circulars, and letters that his said medicines and drugs are quickly absorbed through the stomach into the blood stream and carried to all parts of the body; that this is necessary to drive the aches and pains out and not from one part of the body to another; that they will drive out the aches and pains of the ailments referred to, have relieved the misery, etc., of people who had used crutches and canes, and in many instances were confined to their beds unable to walk; and brought comfort, happiness, and relief to a multitude of sufferers, including severe and chronic cases, where hope had been given up, and makes numerous other representations and assertions of similar tenor;¹ the facts being that said medicines and drugs are not efficacious in the treatment of said ailments, or the aches and pains thereof, but merely dull the sensitiveness of the user so that the user does not feel the aches and pains, and said dulling of aches and pain is of a temporary nature, and the said drugs and medicines do not effectively treat the cause of the said aches and pains, and many persons have purchased said medicines and drugs, in reliance on the truth of such statements, representations, and advertisements.

The use by respondent, as charged "of the false, misleading and deceptive advertisements and representations as hereinabove referred to constitute practices or methods of competition which tend

¹ Other claims and representations, as alleged in detail in the complaint, are set forth in the findings, *infra*.

to and do (a) prejudice and injure the public; (b) unfairly divert trade from and otherwise injure respondent's competitors; and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the sale of medicines and drugs in interstate commerce."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, 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, Paul Case, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed his answer and the case was set down for the taking of testimony before an examiner of the Commission. Evidence was adduced in support of the charges of the complaint. No testimony was offered by the respondent.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and for the respondent. The Commission now having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Paul Case, is an individual, engaged since 1923 in the business of selling and distributing a medicinal product known as "Case Combination Treatment." Respondent has his place of business in Brockton, Mass. Respondent advertises his product in magazines and periodicals, having a nation-wide circulation and sells his said product direct to the consumer and not through retail stores. When orders are received he sends his said product by mail to the purchasers thereof at their respective points of location in the several States of the United States. Respondent is not a physician nor is he a graduate of any college or university of medicine.

PAR. 2. Respondent's product is in tablet form and consists of two different kinds of tablets. Respondent in his literature refers to said tablets as Formula No. 1 and Formula No. 2.

Formula No. 1 contains the following medicines and drugs in the indicated quantities:

	<i>Grain</i>
Powdered willow charcoal.....	$\frac{1}{20}$
Extract Calchicum Root (commercial).....	$\frac{3}{4}$
Sodium Salicylate.....	2
Potassium Acetate.....	$\frac{1}{8}$
Potassium Sulphate.....	$\frac{1}{8}$

Excipients Q. S. to make a 4 grain tablet.

Tablets composed of Formula No. 1 are to be taken, according to the directions of the respondent, four times daily, one tablet at each meal time and one tablet before retiring.

Formula No. 2 contains the following medicines and drugs in the indicated quantities:

	<i>Grain</i>
Cascarin.....	$\frac{1}{4}$
Aloin.....	$\frac{1}{4}$
Podophyllin.....	$\frac{1}{8}$
Extract Belladonna.....	$\frac{1}{8}$
Gingerine.....	$\frac{1}{8}$
Sodium Bicarbonate.....	$\frac{1}{4}$

Respondent's directions for taking tablets composed of Formula No. 2 are "one or two as required to move the bowels twice a day, to be taken upon retiring."

PAR. 3. Respondent has advertised his "combination treatment" in magazines having a nation-wide circulation, such as Good Stories, Grit, Hearth and Home. Respondent has not advertised in such magazines since this proceeding was commenced. At the time of the hearings respondent was confining his advertising to distributing circulars and letters to prospective customers by mail. Among the representations and claims made by respondent in these circulars and letters are that the "Case Combination Treatment"—

(a) Will drive out aches and pains of muscular and subacute rheumatism, neuralgia, gout, sciatica, neuritis, and lumbago;

(b) Is an amazing discovery that has brought comfort and happiness to more than 100,000 sufferers;

(c) Has brought relief to those who have endured the aches and pains of rheumatism, gout, sciatica, neuritis, and lumbago for years, even in severe cases, reporting miraculous relief from their misery;

(d) Has completely relieved the aches and pains of so-called "old chronic" cases where hops had been given up;

(e) Will quickly and completely conquer your trouble.

PAR. 4. Respondent also makes numerous other representations, statements and claims in the circulars which he distributes as aforesaid. A few illustrations of such representations or claims are:

(1) The remarkable feature of the Case Combination Treatment is that in many cases a day's treatment has given relief when all other medicines taken had failed.

(2) You now have in your possession the amazing combination that has brought joy and relief to thousands of sufferers. Surely, you have every right to expect the same results.

(3) Within a few minutes after starting the treatment, the good work has begun. You may not feel the action at once (in some old chronic cases a week may be necessary to note decided improvement) but you may be sure the improvement has started and if you do not interrupt the treatment the trouble should certainly yield to the scientific combination of the medical formulae.

(4) What a happy day to look forward to—and it should be close at hand—when those aches and pains will have left you—when the memory of what you went through will make your dreams possible—when you will be again active with the vim of former years.

PAR. 5. Respondent also quoted numerous testimonials in his circulars and placed headlines above these individual testimonials. A few such headlines are:

(a) Suffered For 20 Years. Had Given Up Hope. Then Tried The Case Treatment.

(b) Could Not Move From Rheumatism. Now Says He Gets About Like A Three Year Old Colt.

(c) Says He Is Free From That Arch Fiend Neuritis, Since Taking The Case Combination Treatment.

(d) Laid Up 10 Months. Case Treatment Quickly Corrects Trouble.

(e) Neuritis Quickly Cleared Up.

(f) Now Goes About Without His Crutches Or Cane. Certainly A Remarkable Recovery.

(g) Could Not Work For A Year. Spent A Fortune Before Finding Relief With The Case Treatment.

(h) Discards Crutches. Sleeps All Night. Works In Garden.

(i) Feels 20 Years Younger. Walks Without Cane. Entirely Active Again.

(j) Throws Crutches Away After 30 Years of Suffering. Had Tried Many Kinds of Medicines Without Results.

(k) Suffered With Rheumatism For 10 Years. Pain Completely Relieved By Case Treatment.

PAR. 6. Four of the circulars above referred to were introduced into the record as exhibits. The evidence discloses that approximately 35,000 of each of such circulars were distributed by respondent to prospective customers from 1929 to the date of the hearing.

PAR. 7. Several medical experts were called as witnesses in this proceeding and testified that respondent's Formula No. 1 had a mild analgesic or anodyne effect when taken in accordance with respondent's instructions, that it would temporarily relieve mild pains, that it did not in itself have any appreciable therapeutic value in the treatment of rheumatism, neuritis, sciatica, lumbago and neuralgia, that Formula No. 2 was a mild cathartic, that the use of the two formulae would not cure nor have any appreciable therapeutic value in the treatment of the above mentioned diseases, that in some mild cases of rheumatism or simple cases of neuralgia the use of the above combination treatment might relieve the pain and the disease might subside, with or without treatment, but that the said medicines in and of themselves did not have proper therapeutic value to produce the results claimed by respondent. The respondent offered no witnesses and the above testimony stands uncontradicted.

PAR. 8. Based on the testimony of the medical experts called in this case the Commission finds that respondent's claims and representations as above recited are false and misleading and also finds that such claims and representations have had and do have the capacity and tendency to mislead and deceive and have misled and deceived customers and prospective customers into purchasing respondent's said product in the belief that it would produce the results claimed by respondent in its advertising as recited above.

PAR. 9. The above medical experts testified that there were numerous other preparations on the market that would have the same physiological action as respondent's product. Competitors of respondent were also produced as witnesses and testified that there were numerous products sold in interstate commerce which would have the same effect as respondent's product. Based upon the above-mentioned testimony, the Commission finds that there are numerous preparations sold in interstate commerce in competition with respondents Combination Treatment.

PAR. 10. The representatives of competitors of respondent above referred to testified that among the various products offered and sold in competition with respondent's product several of such products were not advertised as a cure for the several diseases mentioned and were not otherwise falsely advertised and the Commission now finds that a substantial number of respondent's competitors do not make false claims for their product.

PAR. 11. The Commission finds that the practices of respondent set forth above have the capacity and tendency to injure and do injure, to a substantial extent, respondent's competitors in the sale of their products, by unfairly diverting trade from such competitors to the respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, the testimony and briefs and oral arguments of counsel and the Commission having made a report in writing in which is stated its findings as to the facts with its conclusions that the respondent had 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 being fully advised in the premises,

It is ordered, That the respondent, Paul Case, his agents and employees in connection with the advertising, offering for sale and selling in interstate commerce or in the District of Columbia the medical preparations now known and designated by him as Case Combination Treatment consisting of formulae No. 1 and No. 2, or any other medical preparation of the same or substantially the same ingredients or composition, shall cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, that the use of said medical preparations, or either of them, by whatever name or description known, will cure, or is a treatment for the relief of, rheumatism, neuritis, sciatica, lumbago and neuralgia.

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

IN THE MATTER OF

WHITE-LITE DISTRIBUTING CORPORATION, AND
ALEXANDER H. FISHBERG, DOING BUSINESS UNDER
THE TRADE NAME AND STYLE OF SUN SALES DIS-
TRIBUTING 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 2022. Complaint, Mar. 26, 1932—Decision, Jan. 23, 1934

Where a corporation engaged in the sale of incandescent lamps or bulbs at prices substantially in excess of those ordinarily charged, and an individual, acting in his capacity as treasurer and manager thereof, and in his own behalf as a dealer in such lamps or bulbs, under the mark or designation "Sun-Glo"; in describing, offering and selling said lamps through price lists and salesmen,

- (a) Sold lamps so marked or branded as to indicate a wattage consumption substantially under the true amount, due allowance being made for tolerances prescribed for such products in Federal specifications and customarily recognized in commercial use by the manufacturing and distributing trades involved, and falsely represented said mislabeled lamps as superior to those sold in competition with them and correctly marked, and purported, by comparison between their own under-marked bulbs and their competitors' correctly branded products, to demonstrate the lighting superiority and economy of the former, the facts being their own product actually produced substantially less light per watts consumed than did their competitors';
- (b) Falsely represented said lamps, thus offered and sold, as made to comply with the Bureau of Standards' generally accepted specifications and as having been successfully marketed for many years, and as thus proved "lamps of highest quality", the facts being they fell substantially short of compliance with specified standards, due allowance being made for prescribed tolerances, both in the matter of marking and lighting efficiency as herein above set forth; and
- (c) Falsely represented said mark or designation "Sun-Glo" as registered in the Patent Office, through the legend "Trade Mark Reg. U.S. Pat. Office", printed immediately beneath the illustration of an incandescent lamp in connection with the aforesaid designation;

With effect of deceiving members of the public, users, and consumers of such lamps, into believing the same to be correctly marked, and to constitute lamps, which, compared with competitors', produced as much or more light with less current, and of inducing the purchase thereof, at higher prices, in such mistaken belief, instead of the lower priced, more efficient, and economical products of competitors, who were further deprived of the opportunity of selling bulbs to consumers to whom they had previously sold the same, during their use of the inferior lamps herein concerned, and

with capacity and tendency to mislead and deceive purchasers into believing that said lamps complied in all particulars with specifications of the Government for lamps purchased for its own use, and were products of highest quality:

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

Mr. Edward E. Reardon for the Commission.

Borowsky & Burrows and *Mr. Charles J. Holland*, 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 corporation, organized under the laws of New York, and engaged in the sale and distribution of electric lamps or bulbs, and respondent individual, treasurer of said corporation, and similarly engaged in his individual capacity, under the trade name, "Sun Sales Distributing Co.", and with principal place of business in New York City, in the case of both respondents, with misbranding or mislabeling and misrepresenting product as to performance and quality, and claiming trade mark registration falsely or misleadingly, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation and respondent individual, engaged as aforesaid, as charged, caused the lamps and bulbs dealt in by them to be stamped with a wattage mark very much under their true consumption, contrary to established practice, and caused their salesmen and employees to exhibit said lamps so marked, to prospective purchasers, and on such basis to claim falsely for their own products a performance superior to that of correctly marked competitive products then in use or being sold by competitors, and also greater economy and efficiency than possessed by competitive products with the same ostensible kilowatt consumption.

Respondents further, as charged, displayed on price lists of their said lamps, upon the depiction of a carton, the phrase "Trade Mark Reg. U.S. Pat. Office", together with the words, immediately above said depiction—

Sun-Glo lamps are manufactured to comply with the U.S. Bureau of Standards for incandescent lamps and have been successfully marketed for many years thus proving them to be lamps of highest quality.

The facts were that said trade mark was not registered in the Patent Office as a trade mark for incandescent lamps, the Bureau of Standards had not made or established any specifications or requirements for such products, tests of their said lamps made by the Bureau, as to their performance ability only, showed, among other things, "that the lamps tested had a substantially low efficiency of light output and that such lamps or bulbs would not satisfy the demands of the United States Government, in those respects, in the purchase of incandescent electric lamps or bulbs", and their said lamps or bulbs, for which they charged prices greatly in excess of competitors' prices for lamps either of same pretended, or actual wattage, were of inferior quality compared with competitive products sold throughout the United States at very substantially lower prices by many competitors.

Said representations and statements, as alleged, "which respondents, respectively, caused to be made to purchasers, of the wattage of their electric lamps or bulbs; of the amount of their output of light and the amount of expense of operating them, all in comparison with the electric lamps or bulbs sold by respondents' competitors; and the representations made in their respective said price lists and caused to be made to purchasers by respondents, that the said trade mark was registered in the United States Patent Office as a trade mark used, respectively, in the business of the sale of respondents' incandescent electric lamps or bulbs; that respondents' said incandescent electric lamps or bulbs, respectively, are manufactured to comply with the U.S. Bureau of Standards for incandescent lamps, and that the said lamps or bulbs are or have been proved to be lamps of the highest quality, are and said representations and statements were, each and all, false representations and statements, made and caused to be made by respondents, respectively, with the knowledge of the respondent corporation through its said officers and agents and with the knowledge of respondent Alexander H. Fishberg, at all times above mentioned, that they were false representations and statements."

Said representations and statements, furthermore, as charged, "each and all had the tendency and capacity to mislead and deceive members of the public, purchasers of electric lamps or bulbs, and to divert trade from respondents' competitors and they did mislead and deceive said purchasers into buying respondents' electric lamps or bulbs, as above set forth, in preference to buying the electric lamps or bulbs of respondents' competitors, and the said members of the public, the said purchasers, were thereby defrauded and trade in

incandescent electric lamps or bulbs was thereby diverted from respondents' competitors to 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 (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 brief filed on behalf of the Commission and upon oral arguments by counsel for the Commission and for the respondents, and the Commission having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent White-Lite Distributing Corporation was a corporation organized on or about November 20, 1930, under the laws of New York, having its place of business at No. 7 West Twenty-second Street, Borough of Manhattan, New York City, and it was from on or about the date of its organization until on or about May 16, 1933, when it ceased business and was dissolved as a corporation, engaged in the business of the sale and distribution of incandescent lamps or bulbs.

PAR. 2. Respondent Alexander H. Fishberg was the treasurer and the manager of the business of the respondent White-Lite Distributing Corporation during its existence as above set forth and he also was engaged on his individual account in the business of the sale and distribution of incandescent lamps or bulbs under the trade name of Sun Sales Distributing Co., with a place of business at No. 7 West Twenty-second Street, Borough of Manhattan, New York City, which was the same place of business as that of the respondent White-Lite Distributing Corporation. He filed a certificate of discontinuance of doing business under his said trade

name in the office of the clerk of New York County, New York, on April 14, 1933.

PAR. 3. The said Alexander H. Fishberg has been engaged in or, as an officer and stockholder of corporations, has been connected with the business of the manufacture and sale of incandescent lamps or bulbs for approximately 26 years last past. Since he filed the above mentioned certificate of discontinuance of doing business under the trade name Sun Sales Distributing Co. he has on one or more occasions on his own account purchased and sold incandescent lamps or bulbs.

PAR. 4. During all of the times since on or about November 20, 1930, and January 13, 1931, respectively, the respondent White-Lite Distributing Corporation and the respondent Alexander H. Fishberg, in addition to sales thereof made in the State of New York have sold their incandescent lamps or bulbs to purchasers in various other States of the United States and they have, respectively, during said times caused the lamps so sold by them to be transported from the State of New York or from the State of origin of the shipment thereof, to, into and through States other than New York or the State of origin of the shipment to the purchasers.

PAR. 5. During the times above mentioned, other individuals, firms, and corporations located in the United States have been engaged in the business of the sale of incandescent lamps or bulbs to members of the public located throughout the various States of the United States and they have caused the lamps or bulbs when so sold by them, respectively, to be transported to, into and through States other than the State of the seller, or the State of origin of the shipment to the purchasers.

PAR. 6. The respondents during the times above mentioned were, respectively, in competition in interstate commerce in the sale of incandescent lamps or bulbs with the other individuals, firms, and corporations referred to in paragraph 5 hereof.

PAR. 7. A watt of electricity is a unit of power and the wattage of an incandescent lamp is the measure of electric power used in operating the lamp. A lumen is the unit of light.

PAR. 8. During all of the times above mentioned it has been the universal custom substantially with all manufacturers of incandescent lamps or bulbs, sold to the public in the United States, to label, mark or brand each lamp or bulb with the number of watts indicating the electric power used in operating the lamp and with the number of volts indicating its voltage, allowing for a certain tolerance of measure also customarily recognized in the manufacturing and distributing trades in incandescent lamps or bulbs, and to so

label, mark, or brand the lamps with the appropriate number of watts and volts before the sale or distribution of the lamps by the manufacturers to dealers for resale or to members of the public for their use and consumption.

PAR. 9. During all of the times above mentioned the United States Government has caused specifications to be made and issued with which incandescent lamps purchased by the various departments or establishments of the Government must comply.

Among other things, the Federal specifications for incandescent lamps prescribe the tolerances allowed above or below the rated or labeled or branded wattage and above or below the rated lumens per watt for lamps of various measured wattage purchased by the United States Government for its use.

During all the times above mentioned and referred to, the tolerance customarily recognized in commercial use in the manufacturing and distributing trades in the manufacture and sale of incandescent lamps has coincided with the tolerances contained in the Federal specifications.

PAR. 10. During the times above mentioned and referred to the tolerance of measure for variance above or below the labeled, marked, or branded wattage or watt rating, referred to in paragraphs 8 and 9 hereof, for lamps of the watt rating herein stated, among others, was as follows:

Watt rating	Tolerance
	<i>Percent</i>
16.....	5
25 to 100, inclusive.....	4
150 to 1,500, inclusive.....	5

PAR. 11. The efficiency of incandescent lamps or bulbs is governed or established, among other things, by the amount of lumens of light produced per watt of electric power used in operating the lamps.

During the times above mentioned and referred to it was the universal understanding in the commercial manufacturing and distributing trades in incandescent lamps that the lamps, in order to be considered efficient in the production of light, should produce a certain number of lumens of light per watt rating, with allowance recognized by custom for a certain tolerance of lumens above or below the lumens rated per watt, and it was the custom adopted by the manufacturers of such lamps in accordance with said understanding to make and sell, to dealers for resale or to the public for

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use and consumption, incandescent lamps of the various watt ratings, which among others, allowing for the said tolerance stated below, produced lumens of light as follows :

Watt rating	Lumens	Tolerance above or below lumen rating
	<i>Per watt</i>	<i>Percent</i>
25.....	10.0	6
40.....	10.6	6
50.....	11.1	6
60.....	11.9	6

PAR. 12. And during the times above mentioned the respondent Alexander H. Fishberg, doing business under the trade name Sun Sales Distributing Co., caused a price list of incandescent lamps sold by him, among the lamps referred to in paragraph 4 hereof, to be printed and distributed among the purchasing agents of retail dealers in incandescent lamps and in the price list caused the phrase "Trade Mark Reg. U.S. Pat. Office" to be printed immediately beneath the illustration of an incandescent lamp in connection with which the words "Sun-Glo" were printed.

Immediately above the said illustration the respondent Alexander H. Fishberg caused the following statement to be printed :

Sun-Glo lamps are manufactured to comply with the U.S. Bureau of Standards for incandescent lamps and have been successfully marketed for many years thus proving them to be lamps of highest quality.

PAR. 13. The trade mark consisting of the illustration and words above referred to was not registered as a trade mark in the United States Patent Office during the times it was represented to have been registered in the price list above mentioned.

PAR. 14. During the times above mentioned the incandescent lamps, hereinafter mentioned and referred to in paragraphs hereof 15 to 17, inclusive, sold under the trade mark or trade name "Sun-Glo" by the respondent Alexander H. Fishberg under his trade name Sun Sales Distributing Co., were not made to comply with and they did not comply with the specifications of the Bureau of Standards of the United States Department of Commerce for incandescent lamps marked, respectively, 25-watts, 50-watts and 60-watts; and, with respect both to the said specifications of the Bureau of Standards and the custom recognized and followed by the manufacturing and distributing trades in marking or branding lamps with the number of watts indicating the amount of electric power used in operating them, mentioned in paragraph 8 hereof, the said

Sun-Glo lamps were falsely marked or branded so as to indicate that they were operated by a substantially less amount of electric power than was actually used in operating them, and consequently they were falsely represented to purchasers and users to be lamps that were operated at less expense than was actually the fact.

PAR. 15. The respondent Alexander H. Fishberg, during the times above mentioned, sold lamps marked 25-watts under the trade mark "Sun-Glo" to a dealer who sold them in interstate commerce to a retail dealer who resold them to members of the public, as marked, but which actually measured 28.1 watts and 28.2 watts; or 2.1 and 2.2 watts above the watt measurements customarily represented by the number of watts marked on the lamps, after allowing for the customary tolerance above mentioned between the actual watt measurement and the measurement of 25-watts with which they were marked and represented to purchasers.

PAR. 16. The respondent Alexander H. Fishberg, during the times above mentioned, sold to a dealer lamps marked 50-watts under the trade name "Sun-Glo" and the purchaser sold them in interstate commerce to a retail dealer who resold them to members of the public as marked. These lamps actually measured 63.6 watts and 69.1 watts; or in other words, 11.6 watts and 17.1 watts, respectively, more than the watt measurement customarily represented by the measurement, 50 watts, marked on the lamps, after allowing for the customary tolerance between the actual watt measurement and the number of watts with which the lamps were marked.

PAR. 17. The respondent Alexander H. Fishberg, during the times above mentioned, sold to a dealer lamps marked 60 watts under the trade mark "Sun-Glo" and the purchaser sold them in interstate commerce to a retail dealer who resold them as marked to members of the public. These lamps actually measured 69.8 watts; or 7.4 watts more than the watt measurement customarily represented by the number, 60-watts, marked on the lamp after allowing for the customary tolerance above mentioned.

PAR. 18. The respondent White-Lite Distributing Corporation by its officer and manager, respondent Alexander H. Fishberg, during the times above mentioned, caused and permitted its salesmen in the sale of its lamps as set forth in paragraphs 4 and 6 hereof, to make it a practice to exhibit and demonstrate to members of the public, purchasers and prospective purchasers, its lamps marked or branded a substantially less number of watts than their real or actual watt measurement, after allowing for the customary tolerance of measure referred to in paragraphs 8, 9, and 10 hereof; and at the same time and in connection with the exhibition and demonstration of respond-

ent's lamps, to exhibit and demonstrate lamps of its competitors which were marked or branded with their correct number or measure of watts; and caused and permitted its salesmen to make it a practice in so exhibiting and demonstrating its lamps and its competitors' lamps, to compare the amount of light produced from its lamps with the amount of light produced from the lamps of respondent's competitors which were marked correctly a greater number or measure of watts.

Among many other similar instances the respondent corporation caused and permitted its salesmen to demonstrate its lamps marked 15-watts (which was really a 27- or 28-watt lamp) against the 25-watt standard lamp of one of its competitors then in use by a prospective purchaser; and to compare the amount of light produced from the said 25-watt standard lamp with the amount of light from the 28-watt White-Lite lamp which was marked 15-watts and represented by the respondent's salesmen to the purchaser as a 15-watt lamp. The result of the demonstration and comparison in this instance was that respondent's 28-watt lamp was represented by respondent's salesmen and believed by the purchaser to be a 15-watt lamp and to have produced, as a 15-watt lamp, as much light as the competitor's 25-watt standard lamp.

PAR. 19. The respondent White-Lite Distributing Corporation by its said officer and manager, respondent Alexander H. Fishberg, during the times above mentioned, caused and permitted its salesmen referred to in paragraph 18 hereof to make it a practice to represent to members of the public, purchasers and prospective purchasers, in connection with the demonstration and comparison of its lamps referred to in paragraph 18 hereof, that its lamps were superior to the lamps of its competitors, in that with the lesser quantity of electric power falsely indicated to be used to operate respondent's lamps (indicated by the watt measurement with which they were marked) as much or more light would be produced by them as would be produced by its competitors' lamps with the greater quantity of electric power used to operate them, as indicated by the watt measurement with which they were correctly marked, and said respondent caused and permitted its salesmen further falsely to represent that its said lamps were operated at less expense to the purchaser and user of them than the lamps of the competitors against which they were demonstrated and compared, when in reality as much or more electric power was used to operate respondent's lamps.

PAR. 20. The Sun-Glo lamps mentioned in paragraph 16 hereof sold by respondent Fishberg should have produced, respectively, and according to their actual watt measurement of 63.6 watts and 69.1

watts, and according to the commercial understanding and custom in the manufacturing and distributing trades in incandescent lamps mentioned in paragraph 11 hereof, 717.4 lumens of light and 779.4 lumens of light, whereas they produced, respectively, 417 lumens and 552 lumens. The difference in the amount of lumens of light produced by these lamps and the amount that they should have produced, with the electric power that was used to operate them, represents the difference in efficiency between respondent's lamps and the lamps of respondent's competitors and the difference in the cost of the light produced by them.

The lamps sold by said respondent marked "Sun-Glo", mentioned in paragraph 17 hereof, according to the custom in the trades above referred to, should have produced 788 lumens of light in accordance with their actual measurement. They produced only 569 lumens of light, whereas a standard 50-watt lamp of said respondent's competitors produces 575 lumens.

The cost of electric power for operating this latter 69.8-watt lamp of said respondent, but which was falsely marked 60-watts at 6 cents per kilowatt-hour would be \$4.19, whereas the cost of operating a 50-watt standard lamp sold by one of respondents' competitors, producing as much or more lumens of light, would be \$3 per 1,000 hours or \$1.19 less to the purchaser or user for approximately the same amount of light.

PAR. 21. In 1931 and 1932 the regular retail prices of respondents' competitors to consumers for inside frosted incandescent lamps of standard manufacture was 20 cents each for the sizes marked 10-watts to 60-watts, inclusive; 35 cents each for sizes marked 75-watts and 100-watts; and 60 cents each for 150-watt lamps.

During the said times the respondent White-Lite Distributing Corporation sold its lamps referred to in paragraphs 4, 18, and 19 hereof, amongst other sizes, the 28-watt lamp, which was marked "15-watt", for 40 cents each and its lamps marked "100-watt" for \$1.10 each.

PAR. 22. The lamps above mentioned sold by respondents were inefficient in the production of light according to the standards set for lamps by custom in the manufacturing and distributing trades; were inferior to lamps sold by their competitors; and were more expensive to operate. By means of false marking or branding of their lamps as to the number of watts indicating the quantity of electric power used to operate them and by means of the practices of the respondents above mentioned and referred to, the respondents deceived and misled members of the public, users and consumers of

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incandescent lamps, into the belief that the number of watts with which the respondents' lamps were marked or branded was their true watt measurement; into the belief that respondents' lamps in comparison with their competitors' lamps were better and produced as much or more light with the use of less electric power to operate them and therefore at less expense to the consumer; and relying upon that belief into purchasing the respondents' lamps and paying higher prices for them instead of purchasing the lamps of respondents' competitors which were less expensive to operate, more efficient in producing light, and were superior and sold for less; and with the further consequence thereof prevented and deprived respondents' competitors, during the time respondents' lamps were in use by purchasers, from the opportunity of selling incandescent lamps to consumers to whom they had previously sold lamps and thus diverted trade from respondents' competitors.

PAR. 23. The representations of respondent Alexander H. Fishberg above mentioned that "Sun-Glo" lamps sold by him were manufactured to comply with the United States Bureau of Standards for incandescent lamps and were thus proven to be lamps of highest quality were false representations of material facts and had the tendency and capacity to deceive and mislead purchasers of incandescent lamps into believing that said lamps were lamps that would comply in all particulars with lamps made according to the Federal specifications for incandescent lamps and purchased for use by the United States Government; and the false statement made by said respondent to the effect that the trade mark mentioned in paragraph 12 hereof was registered in the United States Patent Office had the tendency and capacity to increase the effect of the false representations that said lamps complied with specifications of the United States Bureau of Standards for incandescent lamps and that they were lamps of higher quality.

CONCLUSION

The practices of respondent White-Lite Distributing Corporation and of respondent Alexander H. Fishberg under the conditions and circumstances described in the foregoing findings were to the prejudice and injury of respondents' competitors and were to the prejudice and injury of the public and were 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".

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Order

ORDER OF DISMISSAL AND ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of respondents, testimony and evidence introduced, upon the brief of Commission's attorney and oral arguments of counsel for the Commission and for the respondents; and the Commission having made its findings as to the facts and its conclusion that the respondents White-Lite Distributing Corporation and Alexander H. Fishberg, trading as the Sun Sales Distributing Co., 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", and it appearing that the respondent White-Lite Distributing Corporation has ceased business and was dissolved before the close of the taking of evidence.

It is now ordered, That this proceeding be and the same is hereby dismissed as to the respondent White-Lite Distributing Corporation; and,

It is ordered, That the respondent Alexander H. Fishberg, trading under the name Sun Sales Distributing Co. or under his own name or any other trade name, in connection with the sale or the offering for sale of incandescent lamps 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) Offering for sale or selling, directly or indirectly through others, incandescent lamps marked or branded other than with the correct number of watts, indicating the amount of electric power used in operating the lamps, with allowance for the tolerance of measure in watts, which is customarily recognized in the manufacturing trade in the United States in marking or branding incandescent lamps.

(2) Representing, directly or indirectly in price lists or otherwise, that incandescent lamps offered for sale and sold by him are lamps manufactured to comply with specifications of the United States Bureau of Standards for incandescent lamps.

(3) Representing to the public, directly or indirectly in price lists, or by any means whatsoever, that any trade mark used in the sale of incandescent lamps is registered as a trade mark in the United States Patent Office unless such trade mark shall be in fact so registered.

It is further ordered, That the respondent, Alexander H. Fishberg, shall, within 30 days after the service 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 this order to cease and desist.

Complaint

18 F.T.C.

IN THE MATTER OF
WORTH ENGLISH, 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 2131. Complaint, Nov. 10, 1933—Decision, Jan. 25, 1934

Where a corporation engaged in the sale and distribution of face creams and cosmetics, described, characterized and represented as containing turtle oil as an active ingredient thereof,

Represented through labels, circulars, newspaper advertising and radio talks that the aforesaid substance constituted the effective ingredient of said preparations, and penetrated and nourished the skin, removed lines and wrinkles, built up sagging muscles and underlying flesh, rejuvenated the skin and tended to build and firm the bust, through such statements as "Marvelously effective because of the magical qualities of the turtle oil they contain", "Penetrates quickly, cleansing and nourishing the pores and has remarkable rejuvenating properties", "Penetrates every pore and helps build up sagging muscles", contains "imported turtle oil that erases lines and softens wrinkles";

The facts being that none of said various products, nor the ingredient turtle oil, nourish the skin beyond the outer layer thereof, nor do they have rejuvenating properties, or the quality of affecting the muscles, flesh or layers of skin beneath the epidermis;

With tendency and capacity to confuse, mislead and deceive the public into believing that its said products and the said ingredient thereof had the aforesaid properties, and to induce the purchase and use thereof because of such erroneous beliefs thereby engendered, and thereby to divert trade to it from competitors, including those who in nowise misrepresent the functions, uses or effects of their competing products, and with effect of so diverting, to the substantial injury and prejudice of such competitors:

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

Mr. Harry D. Michael 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 and distribution of face creams and cosmetics, including its "English's Turtle Oil Creme", referred to also as "English's Turtle Oil Cream", "English's Turtle Oil Cleansing Cream", and "English's Turtle Oil Skin Freshener and Tonic", and with its office and principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to qualities 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, engaged as aforesaid, as charged, "makes use of labels, circulars, newspaper advertising and radio talks in which it is represented or implied that turtle oil is the effective ingredient thereof and that such ingredient penetrates and nourishes the skin, removes lines and wrinkles, builds up sagging muscles and underlying flesh and rejuvenates the skin", and will "build and firm the bust when applied and pressed into the skin"; the facts being that none of said products, nor the ingredient, turtle oil, therein will remove, erase or lessen lines or wrinkles on the human face or of the skin elsewhere on the human body, or nourish the skin or the pores thereof or penetrate the skin beyond the outer layer thereof or epidermis, or have rejuvenating properties or qualities of affecting the muscles, flesh or layers of skin beneath the epidermis, the skin not being nourished by any such preparation or said ingredient externally applied.

Said representations, as alleged, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's products and said turtle oil ingredient have the property and capacity to nourish and rejuvenate the skin, remove or reduce lines and wrinkles in the face or in the skin in other parts of the human body, build up sagging muscles, penetrate the skin beyond the epidermis and build and firm the bust, and to induce members of the public to buy and use said products because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of face creams and cosmetics; 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 10th day of November, 1933, issued its complaint against the respondent herein, Worth English, Inc., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Said complaint was duly served upon said respondent on the 15th day of November, 1933.

Attached to said complaint and served upon respondent as afore-said was a notice fixing the 15th day of December, 1933, and the office of the Federal Trade Commission in Washington, D.C., as the time and place of hearing upon the charges set forth in said complaint. Said notice further notified said respondent that an answer to said complaint would be required to be filed with the Commission on or before said date for hearing and that upon failure to appear or answer the following provision of the Rules of Practice adopted by the Commission would be applicable, to wit:

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 hearings on the charges set forth in the complaint.

Said respondent having failed either to appear or to file answer to the complaint herein, it is hereby found and adjudged to be in default by reason of such failure to appear or to file answer.

Thereupon this proceeding came on for hearing by the Commission on said default, and the Commission, having duly considered the matter and being fully advised in the premises, find, pursuant to said Rules of Practice, that the allegations of said complaint are true and that respondent has waived hearings on the charges set forth therein. The Commission further finds that this proceeding is to the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Worth English, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its office and principal place of business in the City of New York, in said State.

PAR. 2. Said respondent is now and has been engaged since May, 1932, in the sale and distribution in interstate commerce of face creams and cosmetics described, characterized, and represented as containing turtle oil as an active ingredient thereof. The particular products so described, characterized and represented are "English's Turtle Oil Creme", referred to also as "English's Turtle Oil Cream", "English's Turtle Oil Cleansing Cream", and "English's Turtle Oil Skin Freshener and Tonic." Respondent in the course and conduct of its said business causes its said products to be transported in interstate commerce from its said place of business in New York to, into and through States of the United States other than New York to persons, firms, and corporations to whom or to which they are or have been sold. Respondent sells its said products to

wholesale and retail druggists and other wholesale and retail stores for ultimate resale to members of the public in the various States where said products are ultimately sold.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in the various States of the United States are and have been engaged in the sale and distribution in interstate commerce of face creams and cosmetics, and such other individuals, firms, and corporations have caused and do now cause their said products, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondent has been during the aforesaid time, in competition in interstate commerce in the sale of its said products with such other individuals, firms, and corporations.

PAR. 4. Respondent, in advertising its said products and the claimed functions and effects thereof, makes use of labels, circulars, newspaper advertising, and radio talks in which it is represented or implied that turtle oil is the effective ingredient thereof and that such ingredient penetrates and nourishes the skin, removes lines and wrinkles, builds up sagging muscles and underlying flesh and rejuvenates the skin. In advertisements caused to be inserted by respondent in newspapers circulated to the purchasing public in various States of the United States, respondent's said three products are referred to as:

English Turtle Oil Preparations

and the following statements are made in regard thereto:

Nourishing, Cleansing.

Marvelously effective because of the magical qualities of the turtle oil they contain.

In an advertising circular furnished to dealers by respondent and distributed to the purchasing public, the following statements are made in regard to "English's Turtle Oil Creme":

. . . this cream contains pure turtle oil.

Have you looked in the mirror lately and noticed lines appearing around the eyes and mouth? Or traces of a sagging chin? If these signs are present, then correction is important . . . prevent these by taking action now . . .

Here is a smooth, light, nourishing cream, with a delightful, fresh perfume. It penetrates quickly, cleansing and nourishing the pores and has remarkable rejuvenating properties.

In radio advertising talks on behalf of respondent and its products broadcast to the purchasing public, the following statements have been made:

. . . Turtle Oil Creme nourishes the skin, penetrates every pore and helps build up sagging muscles. Its gentle action benefits lines and wrinkled skin, whether from approaching old age or exposure to sun and wind.

On a sticker or label on the jar in which said "English's Turtle Oil Creme" is displayed for sale to the purchasing public, the following statements appear:

A Rich Nourishing Cream, containing imported Turtle Oil that erases lines and softens wrinkles.

This cream will also tend to build and firm the bust when applied and pressed into the skin.

PAR. 5. In truth and in fact, none of said products nor the ingredient, turtle oil, therein will remove, erase or lessen lines or wrinkles of the human face or of the skin elsewhere on the human body. Nor does any of said products or the ingredient, turtle oil, nourish the skin or the pores thereof or penetrate the skin beyond the outer layer thereof or epidermis. Neither does any one of said products or said ingredient have rejuvenating properties or qualities of affecting the muscles, flesh or layers of skin beneath the epidermis. The skin is not nourished by any such preparation or said ingredient externally applied.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's products and said turtle oil ingredient thereof have the property and capacity to nourish and rejuvenate the skin, remove or reduce lines and wrinkles in the face or the skin in other parts of the human body, build up sagging muscles, penetrate the skin beyond the epidermis and build and firm the bust when in truth and in fact neither any of said products or said ingredient has any of said effects or functions. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use said products because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of face creams and cosmetics.

PAR. 7. There are among the competitors of respondent in the sale of its said products those who in nowise misrepresent the functions, uses or effects of their competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices 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 con-

stitute unfair methods of competition in commerce and are in 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 duly heard by the Federal Trade Commission upon the record, and the Commission made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That respondent, Worth English, Inc., a corporation, its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of the face creams and cosmetics described in the findings of fact this day made by this Commission in this proceeding or any other face creams or cosmetics of the same or substantially the same composition or ingredients, cease and desist from representing by express statements or by implication that such face creams or cosmetics or the ingredient, turtle oil, therein, will penetrate and nourish the skin, remove or reduce lines or wrinkles, build up sagging muscles or underlying flesh, rejuvenate the skin, or build and firm the bust.

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

IN THE MATTER OF
WALKER'S NEW RIVER MINING COMPANY

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

Docket 2028. Complaint, Apr. 28, 1932—Decision, Feb. 1, 1934.

TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—"NEW RIVER"
COAL FROM NEW RIVER FIELD AND GEOLOGISTS' "NEW RIVER" GROUP OF THE
POTTSVILLE SERIES—SALE AS "NEW RIVER" OF COAL FROM SAME GEOLOGICAL
CLASSIFICATION, BUT DIFFERENT FIELD.

Where a coal field in southern West Virginia, contiguous or adjacent to the New River, had long since come to be known and designated as the New River field, and the coal there mined had come to be well and favorably known as New River coal due to operators' care in selling under such name only coal of the highest grade, character, and quality, irrespective of the particular seam from which taken, and to said operators' long advertisement thereof, under said name, at large expense, so that the words had come to signify to wholesalers, retailers, and the consuming public, coal of high character, quality, and utility produced in the aforesaid particular section, and such coal under said name had come to enjoy a widespread and continuous domestic and foreign demand and sale; and thereafter a corporation engaged in mining coal from the same seam and geological classification, to wit, the "New River group of the Pottsville series", in a locality 75 to 100 miles distant from the aforesaid field, and in selling said coal in competition with the genuine New River product in various sections of the United States, including several New England States, certain large eastern cities, including New York, and various points in Ohio, Michigan, and Wisconsin, to many of which sections the former enjoyed a more favorable freight rate than the latter.

- (a) Adopted as and for its corporate and trade name, a name including words "New River", and featured said name containing the words "New River" in advertisements and advertising matter offering its said coal, and upon letterheads and stationery used in soliciting the sale thereof; and
- (b) Described its said coal in advertisements as "New River coal" and so offered, sold and invoiced the same, and as "N.R. Nut and Slack" thereby signifying New River nut and slack;

With result that purchasers thereof and said purchasers' vendees advertised and/or sold the same as and for "New River coal", and wholesale and retail coal dealers were furnished with the means enabling them to mislead and deceive their respective purchasers into believing such coal to have been produced in the New River field, and with capacity and tendency to mislead and deceive the public into believing such coal to have been there produced, and to have the uniform characteristics and qualities associated therewith, irrespective of geological origin or mining fluctuations, and to induce its purchase in such belief, and to divert trade to it from competitors offering and selling either coal produced in such field, or coal truthfully advertised, described and represented, from its own, or any other, district:

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

TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—COAL FIELDS—GEOGRAPHICAL V. GEOLOGICAL CONSIDERATIONS.

Carefully selected coal from a well defined territory near the New River, had long been mined, widely advertised and sold under said name, so that coal thus named had come to be widely and favorably known as meaning coal produced in said territory and possessed of certain definite, desirable characteristics and uniform qualities. Coal seams involved and underlying said territory and extending far beyond, were known for their entire extent by geologists as constituting the "New River Group of the Pottsville series". *Held*, That such fact did not justify a competing concern, which subsequently engaged in mining coal of high grade, with many similar qualities, from an anticline vein of one of the aforesaid seams, located in a field 75 or 100 miles distant from said territory and separated therefrom by a mountain range, in also naming and selling its said coal as "New River", since the association that had theretofore come to attach to the product from said territory, thus sold, found its significance in the fact of geographical location and not, as contended, in that of geological classification.

TRADE NAMES—GEOGRAPHICAL AND GEOLOGICAL NAMES—WHERE NAMES SIMILAR FOR SAME PRODUCT—GEOGRAPHICAL NAME AND SECONDARY MEANING—LIMITATIONS WHERE PRODUCT OUTSIDE RESTRICTED GEOGRAPHICAL AREA.

The fact that a name correctly identifies a certain product from a geological standpoint, will not permit the proper application thereof to such product commercially, where said name had theretofore come to acquire trade significance through long usage and expenditure of funds as identifying a definite district with such a product, with definite qualities associated therewith as coming therefrom, and where the product, to which application of such name is sought to be justified on geological grounds, does not in fact come from such district, though geologically identical with the product in fact there produced, and of substantially the same quality. The general principle of nonsubstitution, born of the consideration that the public is entitled to what it wants, even though its choice be governed by fashion, taste, or pure idiosyncrasy, is applicable, and even though the extent of the use of the name, otherwise correctly, so to identify such product geologically, is thereby limited. If the trade cares about geography, because it has been taught, at the producer's expense, that geography is a test of quality, it is entitled to be protected in that predilection, and it is misleading to pretend to the trade and the public that a geographical test of quality is being offered it, when in truth the test offered is a geological one.

PUBLIC INTEREST—TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—USE OF SAME NAME, AS GEOLOGICAL IDENTIFICATION, FOR SIMILAR PRODUCT OF SIMILAR QUALITY, NOT FROM RESTRICTED GEOGRAPHICAL DISTRICT.

The public is entitled to a product selected on the basis of tests it believes itself to be applying, and not merely to a product of practically the same quality and the same grade it would have gotten under such tests, and where a geographical name had come through long use favorably to identify a certain product to trade and public as coming from a well defined district, and as having definite virtues, it could not be said that there was no public interest in preventing the sale thereafter, under said name, as a matter of geological classification, of coal of asserted equal quality, not there mined.

Complaint

18 F.T.C.

Mr. James M. Brinson for the Commission.

Mr. George C. Doub, 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 Walker's New River Mining Company, a corporation, hereinafter called 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 Walker's New River Mining Co. is a corporation organized, existing, and doing business under any by virtue of the laws of the State of West Virginia, with its principal office and place of business in the city of Elkins in the State of West Virginia. Respondent has been, for more than a year last past and now is, engaged in the business of mining or extracting coal from a mine or mines situated in Flint in the county of Randolph in the State of West Virginia, near or in the vicinity of Elkins, W.Va., and in the sale of such product in commerce among and between the various States of the United States other than the State of West Virginia. It has caused and causes its said product, when sold, to be transported from its said place of business at Elkins, W.Va., or from its mines located as aforesaid to purchasers in a State other than the State of West Virginia. It has been, was at all times hereinafter mentioned, and now is, in competition in the course and conduct of its said business with individuals, partnerships and corporations engaged in the sale of coal in interstate commerce.

PAR. 2. Respondent Walker's New River Mining Co. has adopted, and at all times hereinafter mentioned used, and now uses as and for its corporate name and trade name the words "Walker's New River Mining Co.", in connection with offering for sale and selling its coal in commerce among and between the various States of the United States. Respondent has also caused its corporate and trade name containing as aforesaid the words "New River" to be conspicuously displayed in advertisements and advertising matter which it has caused and causes to be circulated and distributed among purchasers and prospective purchasers in the various States of the United States, and on invoices furnished purchasers of its

product, reflecting sales thereof, it has caused the same to be represented, described, or designated, as "N. R. Nut & Slack", thereby indicating and meaning New River Nut and Slack.

The words "New River" used in connection with, or to describe or designate coal or coal mines, have for many years signified and meant, and have been understood to signify and mean, and now signify and mean to the purchasing public, coal produced or extracted from mines situated in the district adjacent to New River, and lying, or being within the counties of Wyoming, Raleigh, Fayette, and Greenbrier in the southern portion of West Virginia.¹

In truth and in fact respondent Walker's New River Mining Co. does not own, operate, or control, and has not owned, operated, or controlled for more than a year last past, or at any time heretofore, any coal mine or mines situated in the New River district as hereinbefore described, and the coal which it has sold and now sells in commerce described in paragraph 1 hereof, and which it has caused and causes to be described in its invoices "N.R. Nut and Slack", has not been, was not, and is not, mined or extracted from any mine or mines situated within the district generally known as the New River Mining District.

PAR. 3. There have been, for many years last past and now are, many producing coal mines in the New River District described in paragraph 2 hereof, and from them there has been produced and sold each year, and is now produced and sold each year in interstate commerce, a large and extensive tonnage of coal, by many individuals, partnerships, and corporations operating mines in such district. Such coal so produced and sold as "New River Coal" has acquired in foreign countries as well as in the United States, and for many years last past has maintained a high reputation on account of its character and utility, and is now widely and popularly known for its excellence in the United States and in foreign countries among the purchasing public, and has long had, and now has, a consistent and favorable good will, and the name "New River" as applied to, or used in connection with, coal has become and is a substantial asset of great value to the many individuals, partnerships, and corporations engaged in the production and sale of coal from mines in the New River District.

The mines owned or operated by respondent from which the coal sold by it in interstate commerce is mined or extracted, are neither

¹ The complaint originally named "Lafayette" instead of "Fayette" in the foregoing enumeration of counties, but was changed to its present form, in order to conform to the evidence, pursuant to motion of the Commission's chief counsel.

adjacent nor contiguous to the New River, or the New River District, and in fact are situated in a region from 100 to 150 miles distant from the New River District.

PAR. 4. The practices of respondent, in using the words "New River" in its corporate and trade names, and in offering for sale and selling its coal described, designated, or invoiced as "New River Coal" have had and have, and each of said practices has had and has the capacity and tendency to mislead and deceive the public into the belief that the coal so offered for sale and sold by respondent has been and is coal mined or extracted from, or produced in, the district generally known as the New River District, and to induce the purchase of such coal in reliance on such erroneous belief. Such practices also have had and have, and each of them has had and has the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce, coal mined or produced in the New River District, and from competitors offering for sale and selling, in interstate commerce, coal from other districts in West Virginia than the New River District, truthfully described and designated.

PAR 5. The acts and practices of respondent as described in paragraph 2 hereof are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, in violation of the provisions of Section 5 of the Act 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, OPINION, AND ORDER

Acting in pursuance 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" (38 Stat. 717) the Federal Trade Commission on the 26th day of April, 1932, issued and thereupon served as required by law, its complaint upon Walker's New River Mining Co., a corporation, hereinafter designated as respondent, in which said 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.

Respondent, Walker's New River Mining Co., having filed its answer herein, testimony and evidence were duly received before an examiner for the Commission, theretofore duly appointed for such purpose in support of the complaint and on behalf of respondent.

Thereupon this proceeding having come on for final hearing on the record and on briefs and oral argument by attorneys for the Commission and the respondent, and the Commission having considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and now files this its report in writing, stating its findings as to the facts and its conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walker's New River Mining Co., has been since 1927 and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, having its principal office and place of business in the city of Elkins, State of West Virginia. Respondent has been since its organization and now is engaged in the business of mining or extracting coal from a mine or mines situated at Flint in the county of Randolph in the State of West Virginia, near or in the vicinity of Elkins, in said State, and in the sale of such coal in commerce among and between the various States of the United States. It has caused and causes its coal when so sold to be transported from its said place of business at Elkins, W.Va., or from its mines located, as aforesaid, to purchasers in a State or States other than the State of West Virginia. Respondent has been, was at all times hereinafter mentioned, and now is in the course and conduct of its said business in competition with individuals, partnerships, and corporations engaged in the sale of coal in interstate commerce, including producers of coal in the New River field sold in interstate commerce as New River coal, as hereinafter set forth.

PAR. 2. Coal has been mined in southern West Virginia on territory contiguous or adjacent to the New River since 1872 when completion of an extension of its railway by the Chesapeake & Ohio Railroad Co. opened such territory to development and since then it has been served in connection with the transportation of coal exclusively by the Chesapeake & Ohio and the Virginia railroad companies to tidewater ports or other points.

The territory above described became known and designated and has been so known and designated as the New River field or district for more than twenty-five years. Coal was and still is mined in such territory from several seams, principally the Sewell, the Beckley, the Fire Creek, and the Welch. These seams extend beyond the boundaries of the New River field, both in a northerly and southerly direc-

tion. The Sewell seam extends to the north in Pennsylvania and in such State is there called the Sharon. Extending southerly the Beckley and Fire Creek seams are mined in the Winding Gulf field and both of these seams together with the Sewell seam are mined in the Pocahontas field. Coal from all of these seams was studied by geologists and was classified and described in geological literature as "New River Group of the Pottsville Series." Mining operations, at first on land contiguous to the New River, extended from time to time until land adjacent to the New River was also mined and the New River field continued to develop and grow until it embraced and now includes substantial parts of the counties of Fayette, Raleigh, and Greenbrier in southern West Virginia.

The number of operators in the New River field also from time to time increased until now there are and for a considerable period before the organization of respondent company there were sixty-three producers of coal in the New River field, and for more than twenty-five years last past coal from such field has been and is sold as New River coal. It has been and is the policy and practice of coal operators in the New River field to offer for sale and sell as New River coal only coal of the highest grade, character and quality mined in the New River district irrespective of the particular seam or seams from which it has been or is extracted. In other words coal found in any seam in the New River field inferior in grade, character or quality has not been and is not sold by producers of coal in the New River district as New River coal. The result of such a practice by producers of the New River district has been that wholesale and retail dealers in coal and the consuming public have associated the words New River with coal of a distinctively and uniformly high-grade character and quality originating and produced in, or from the New River field.

The coal operators or producers of the New River field have expended for many years last past and long prior to the organization of respondent company considerable sums of money in advertising such high-grade product of their mines as New River coal and one of them has expended a million dollars in advertising its product as New River coal. It produces approximately 3,000,000 tons of coal yearly and employs 3,000 men.

In the aggregate there are mined in the New River field approximately 12,000,000 tons of coal yearly and for this coal on account of the aforesaid practice in such New River field of selling as New River coal only that of high quality there is a favorable goodwill and a continuous and wide-spread demand. Coal from such field is

sold both in the United States and in foreign countries as New River coal and its excellence and utility have become so associated with the words New River that they have signified and meant for many years prior to the organization of respondent company and now signify and mean to wholesale and retail dealers and the consuming public, coal of high character, quality and utility, produced in that particular section of West Virginia known as the New River field or district.

PAR. 3. Respondent, Walker's New River Mining Co. adopted at the time of its said organization, and at all times since has used, and now uses, as and for its corporate name and trade name, the words "Walker's New River Mining Company", in connection with offering for sale and selling its coal in commerce among and between the State of West Virginia and the various States of the United States and in commerce between the State of West Virginia and the District of Columbia. Respondent has caused its corporate name and trade name containing the words, as aforesaid, "New River" to be conspicuously displayed in advertisements and advertising matter, which it has caused and causes to be circulated and distributed among purchasers and prospective purchasers in the various States of the United States. The letterheads of stationery respondent uses in communications with inquirers or prospective purchasers or others from whom it solicits business, carry, in large and conspicuous letters, the words "Walker's New River Mining Company." They also bear the following legend: "Walker's New River Big Sewell Mine, Flint, W.Va., and W.M. Ry."

In its advertisements, and in such communications, respondent has described and describes its coal as "New River" coal, and it has been and is its practice to offer for sale, sell and invoice it as "New River" coal, sometimes as "N.R. Nut and Slack", thereby signifying New River Nut and Slack.

The mines, owned or operated by respondent from which the coal sold by it in interstate commerce as "New River" coal is mined or extracted, are neither adjacent nor contiguous to the New River or the New River district or field and are, in fact, situated in a region from seventy-five to one hundred miles from the New River coal field or district which is known and described as "Cheat Mountain Coal Field", and coal produced from such mines by respondent is not New River coal as such words signify and mean and as such description is known and understood by the purchasing public.

The various sections of the United States in which the coal of respondent is sold in competition with the genuine New River coal

include certain parts of Massachusetts, Connecticut, Rhode Island, the Metropolitan District of New York, Philadelphia, Baltimore, Washington, and various points in Ohio, Michigan, and Wisconsin. In many of such sections except the tidewater points and the area immediately tributary thereto, depending entirely upon transportation by rail of coal from the Cheat Mountain district and the New River district or field, the respondent enjoys a more favorable freight rate for the transportation of its coal than producers of coal in the New River district or field.

As the result of respondent's practices hereinbefore described, purchasers of coal sold to them as New River coal, have advertised it and sold it as New River coal, and still advertise and sell it as New River coal and their vendees in turn have resold it and continue to resell it to the consuming public as New River Coal, the particular designation under which the respondent caused it and still causes it to be sold in interstate commerce.

PAR. 4. The practice of respondent in using the words "New River" in its corporate and trade name and its practice of offering for sale and selling its coal described, designated, or invoiced as "New River" coal, have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the public into the belief that the coal so offered for sale and sold by respondent has been and is coal mined, extracted, or produced in the district generally known as the New River district or New River coal field, a name which to the public is an assurance of uniform character and value irrespective of geological origin, or fluctuations in quality encountered in mining from various seams of coal, and to induce the purchase of such coal in reliance on such erroneous belief.

The aforesaid practices of respondent have also furnished and furnish wholesale and retail coal dealers with the means by which they have been and are enabled to mislead and deceive their respective purchasers into the belief that the coal offered for sale and sold by respondent is coal produced, originating or mined in the New River field.

The aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to divert trade to respondent from competitors offering for sale and selling coal produced in the New River district or field and from competitors offering for sale and selling coal from any other district or field in the United States, including the Cheat Mountain coal field, truthfully advertised, described, and represented.

OPINION OF THE COMMISSION

The respondent is charged with using unfair methods of competition in interstate commerce in that it is using the words "New River" in connection with the sale in interstate commerce of coal which, it is contended, is not coal known to the trade as New River coal. By its use of the name "New River" in its corporate name, its business literature and in its general advertising, it is alleged to be engaged in practice that deceives purchasers and thereby constitutes an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act.

The respondent is a West Virginia corporation, organized in 1927, and engaged since that time in the business of mining coal from mines situated in Randolph County, W.Va. It sells its product in other States, particularly Ohio, New York, Pennsylvania, the New England States, and the District of Columbia, advertising it generally as New River coal.

Coal was first mined in the New River territory about 1872 when that region was opened up by the Chesapeake & Ohio Railway. The mining operations began on the banks of the New River but soon extended to contiguous territory in the counties of Fayette, Raleigh, and Greenbrier—a territory frequently spoken of as the New River field. In this field, there are now some 63 coal companies, producing about 12,000,000 tons of coal a year. For many years an effort has been made to give the product of these companies a special trade value by denominating it as New River coal and advertising such coal in the markets naturally served by this field. More than a million dollars has been spent in this form of advertising. Not all coal mined in the New River field, even though mined from seams that may geologically be regarded as belonging to the New River series, is regarded or sold by these operating coal companies as New River coal. The coal in order to come within that description must also be of a certain quality, namely, smokeless in character and having a low volatile content and a high heating efficiency.

The efforts of the operators in the New River field to distinguish New River coal from other types of coal and to give it a recognized reputation for quality have been generally successful. It is widely known throughout the Eastern States and even in England as a bituminous coal of high quality. Because of its low volatile content and high heating value, it is much used by steam vessels to supply their bunkers.

Geologically the coal, known as New River coal and mined in the New River field, comes from seams belonging to the New River group of the Pottsville series.¹ The principal seams in this series are the Sewell, Welch, Beckley, and Fire Creek. Some of these seams extend far beyond the New River field, running northeast into Pennsylvania and southwest as far as the Virginia state line.

Randolph County, where the respondent's mining operations are carried on, is from seventy-five to one hundred miles distant from the New River field. A mountain range intervenes. The respondent mines a vein of the Sewell seam, which vein is known as a syncline or anticline vein, being physically separated by a ridge from the principal Sewell seam. The respondent's coal is of high quality, having many of the qualities of the New River coal mined in the New River district, though having a higher moisture content, a higher fusing point and a lower British thermal unit content.

No contention is made, however, that the respondent is selling as New River coal a coal of an essentially inferior quality. The contention is that the respondent's coal is not New River coal, inasmuch as New River coal has a specific meaning in the coal trade limiting it to coal of a particular quality mined in the New River field. The contention is further that, though the respondent's coal may appropriately be designated as New River coal from the geological standpoint, inasmuch as it is mined from a seam in the New River group of the Pottsville series, so designating it to the coal trade is misleading because that trade has a general understanding that New River coal is limited to coal mined in the New River field.

1. The respondent contends that New River coal is not in fact a term signifying to the trade coal from the New River field. Instead, it is contended that New River coal is appropriately applied in the trade to coal mined from any of the coal seams known as the New River group of the Pottsville series. Such an issue of fact naturally evokes conflicting and contradictory testimony. The Commission's witnesses embraced representative persons in the coal trade from Boston, New York, Philadelphia, and Washington—the chief urban centers in the eastern market for New River coal. The geographical rather than the geological content was given by them to the term New River coal.² Some vagueness existed as to the exact limits of the New River field, but the witnesses did not travel beyond the territory contiguous to the territory embraced in the counties of

¹ The testimony on this point by the Commission's witnesses was generally to the same effect, though one of the Commission's witnesses, a large New England dealer, testified that he thought the respondent's use of the term New River as applied to his coal was entirely proper.

Fayette, Raleigh and Greenbrier. The respondent's witnesses, on the other hand, maintained that the term to the trade was primarily one with geological content. Some testimony was given by dealers in Randolph county as to the trade significance of the term and also to the effect that coal from that county was generally sold as New River coal. Testimony as to other companies than the respondent selling coal mined elsewhere than in the New River field as New River coal is not convincing.⁸ The great weight of the evidence favors the contention of counsel for the Commission that New River coal is a trade term and as such applicable only to coal of a certain quality mined in the New River field.

2. The respondent again contends that, even though the public and the coal trade give the geographical and not the geological content to the term "New River" as applied to coal, selling as New River coal such coal as can geologically be designated as New River coal is not an unfair method of competition. The contention bases itself upon the thesis that there can be no rightful appropriation of a geological name to an article as coming from a restricted geographical area when there is a more extensive area from which an article identical from the geological standpoint and of substantially the same quality is produced. Otherwise, so the argument runs, operators in other areas who have the same product to sell cannot correctly and appropriately designate their product inasmuch as the correct and appropriate designation has already been pre-empted. Another viewpoint, the respondent urges, would favor monopoly and make impossible full development of the geological resources of the territory. Coal from the Pittsburgh seam, the respondent points out, is mined as Pittsburgh coal in regions far removed from Pittsburgh. Similarly, Pennsylvania crude oil is produced not only in the State of Pennsylvania but also in West Virginia, Ohio, and in New York.

The argument, however, loses sight of the fact that in such instances no trade quality, other than that of geological identity, had attached by long usages and the expenditure of funds, to the geographical appellation given the product. It is true that there can be no exclusive trade appropriation of a geographical term so as to

⁸ The examiner excluded evidence offered by the respondent tending to show that companies mining coal from other fields than the New River field employed the words "New River" in their corporate names. This exclusion was unfortunate, but the respondent was permitted to introduce testimony showing that these companies sold coal not mined in the New River field as New River coal. Some evidence tending to show that the Consolidation Coal Co., the largest bituminous coal concern in West Virginia, sold coal mined in McDowell County as New River coal was introduced. It was admitted, however, that coal mined from the Sewell seam in Pennsylvania was never sold as New River coal but frequently sold as Sewell coal.

exclude others who are selling products of the same geographical origin from indicating that fact by using the term commonly employed in the trade as indicative of that geographical origin. *Delaware & Hudson Canal Co. v. Clark*, 80 U.S. 311. But where a geographical origin has a trade significance, the use of a term descriptive of such an origin cannot be applied to a product of a different origin, even though such a product may be of identical quality. *City of Carlsbad v. W. T. Hackery & Co.*, 57 Fed. 18. See also *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 216; *George Harvey v. American Coal Co.*, 50 F. (2d) 832. This general principle of nonsubstitution, born of the consideration that the public is entitled to what it wants even though the public's choice may be governed by fashion, taste or pure idiosyncrasy, is applicable even though a term which is descriptive of geographical origin can be applied in the universe of geological discourse to describe a product of a different geographical origin. If the trade cares about geography, because it has been taught at the producer's expense that geography is a test of quality, it is entitled to be protected in that predilection. Nothing prevents the respondent from urging the trade to accept in place of a geographical test, a geological one. But it is misleading to pretend to the trade and the public that a geographical test of quality is being offered, when in truth the test offered is a geological one.

3. The respondent's final contention is that no public interest is to be served by this proceeding. It argues that its coal is of the same quality as New River coal mined in the New River field, and that therefore, the public is not truly deceived. But this neglects the fact that it is in the public interest that the public is entitled to the tests that it believes itself to be applying and not merely to a product of practically the same quality and the same grade as it would have gotten had it applied its test.

4. The existence of competition in this case is not in issue. The respondent sells its coal in competition with New River coal primarily in the Eastern market. And its position, some seventy-five miles nearer these markets and served by a different road, gives it a freight rate advantage over its New River competitors in some of these Eastern markets as well as at some of the Lake ports.

These findings, and the conclusions derivable therefrom, lead to the conclusion that the respondent should cease and desist from representing by its corporate name, its business and advertising literature, that it is selling New River coal. An order to that effect should issue.

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent Walker's New River Mining Co., in or in connection with, offering for sale or selling coal in interstate or foreign commerce or in commerce between the State of West Virginia and the District of Columbia or in the District of Columbia, cease and desist directly or indirectly from—

(1) Describing or designating said coal as "New River" coal or by the abbreviation "N.R.", or by any other abbreviation, letters or words of the same or similar import unless such coal originates, is produced or mined in that portion of West Virginia lying, being or situated within the territory generally known as the "New River" field or district.

(2) Using in its corporate name the words "New River" or words, letters or abbreviations of the same or similar import unless coal so offered for sale or sold originates or is produced or mined in the "New River" field or district as described in paragraph 1 hereof.

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

IN THE MATTER OF
JACOB ANTINOPH AND HARRY MEDOFF, COPARTNERS,
DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF PHILADELPHIA LEATHER-GOODS CO.

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

Docket 2098. Complaint, Mar. 29, 1933—Order, Feb. 2, 1934

Consent order requiring respondents, their agents, etc. to cease and desist, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of handbags, suitcases, and other luggage or other products made from the under layers of sealskin, known as "Split Seal", from designating and describing the same as "Seal" or "Genuine Seal" unless the word "Seal" is modified by the word "Split" in letters equally conspicuous or other expression clearly and conspicuously designating that the material is an under layer of sealskin.

Mr. Harry D. Michael 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 Joseph¹ Antinoph and Harry Medoff hereinafter referred to as respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. The respondents Joseph Antinoph and Harry Medoff are now and have been for several years last past partners under the firm name and style of Philadelphia Leather-Goods Co., and engaged in the business of manufacturing and selling in interstate commerce to jobbers and retail dealers throughout the United States handbags, suitcases, and other luggage. They cause said merchandise when sold to be shipped in interstate commerce from their 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 their business respondents are and have been in competition with many other persons, firms and corporations located in the United States engaged

¹ Should be Jacob. See p. 192.

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 respondents' competitors mentioned in paragraph 1 hereof make and sell luggage manufactured from leather made 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. Respondents among other merchandise manufacturer and sell in the course of business described in paragraph 1 hereof luggage the covering of which is the material mentioned in paragraph 2 hereof as Split Seal which material is treated, embossed and finished by said respondents so as to imitate the leather known as Seal or Genuine Seal as described in paragraph 2 hereof. Respondents 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 in selling said spurious luggage to the public.

PAR. 4. The said description and representation made by respondents as to their 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 respondents' competitors to the respondents.

PAR. 5. 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

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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 29th day of March, 1933, issued its complaint against Joseph Antinoph and Harry Medoff, copartners, doing business under the firm name and style of the Philadelphia Leather-Goods Co., and caused the same to be served upon the respondents named in the title hereof as required by law, in which complaint it is charged that said respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On April 27, 1933, said respondents named in the title hereof entered an appearance herein and filed an answer to said complaint setting forth among other things that the correct name of the first copartner in said copartnership doing business under the firm name and style of the Philadelphia Leather-Goods Co. is *Jacob* Antinoph instead of *Joseph* Antinoph, as erroneously stated in the title and elsewhere in said complaint. On January 13, 1934, said respondents, Jacob Antinoph and Harry Medoff, copartners doing business under the firm name and style of Philadelphia Leather-Goods Co., submitted to the Commission for filing an amended answer electing to refrain from contesting this proceeding and consenting to the issuance of an order to cease and desist from the practices set forth in the complaint herein, which said amended answer is hereby received and ordered filed.

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 respondents, Jacob Antinoph and Harry Medoff, copartners, doing business under the firm name and style of Philadelphia Leather-Goods Co., their agents, employes, or successors, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of handbags, suitcases, and other luggage or other products made from the underlayers of sealskin known as "Split Seal", cease and desist from designating

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and describing the same as "Seal" or "Genuine Seal" unless the word "Seal" is modified by the word "Split" in letters equally conspicuous or other expression clearly and conspicuously designating that the material is an underlayer of sealskin.

It is further ordered, That 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 they are complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
VANADIUM-ALLOYS STEEL COMPANY

COMPLAINT, FINDINGS, OPINION, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1694. Complaint, Sept. 19, 1929—Decision, Feb. 3, 1934

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"COMPETITION"—WHAT CONSTITUTES SUBSTANTIAL—CRITERIA—QUANTITATIVE, QUALITATIVE, PRICE, AND FUNCTIONAL.

In a proceeding by the Federal Trade Commission, challenging the acquisition by a corporation of stock in another corporation, as a violation of said section, prohibiting such acquisitions in the case of corporations engaged in interstate 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 in any line of commerce", a showing that, (1) at least 22.5 percent of the acquiring company's sales of "comparable and competitive" brands of tool steels, and nearly 54 percent of the acquired company's sales of similar products were competitive in certain fields, (2) both companies' tool steels were characterized by marked similarity as to type, determining elements, and price, and, (3) that, founding competition on two of said products' practically equal desirability for at least one use, percentages of 82.5 and 77.7 were respectively reached, *held* to disclose substantial competition in tool steel production between the two companies, in full accord with the analyses of competitive products made in *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, and to give a true concept to the term "competition."

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"COMPETITION"—POTENTIAL AND FUTURE—"COMPARABLE" AND/OR "COMPETITIVE" BRANDS.

Section 7 looks to the lessening of future competition as well as to the suppression of such competition as there may have been in the past, and where substantial proportions of the two companies' sales were concerned with "comparable" and/or "competitive" tool steels, sold in common markets and to common customers, there was no question that such companies were and might be in substantial competition with one another as to said products, since "though there may be at the moment no willingness on the part of customers to take one brand instead of another because of a multitude of differences, such as minor variations in quality, prior business relations involving more than the one product, and even the inertia that so often finds high capitalization under the term 'good-will', products that at the beginning may only be 'comparable' quickly become 'competitive' as salesmen become active, markets limited, and manufacturers mould quality and price to meet variant desires."

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—UNIFICATION OF SALES AND PRODUCTION POLICIES—SUBSTANTIAL LESSENING OF COMPETITION—INCREASE IN YEAR'S RESPECTIVE CORPORATE SALES.

Where a company, in substantial competition with a second concern in the manufacture and sale of tool steel, following its acquisition of all the outstanding capital stock of the other and as a result thereof, closed, or combined, certain warehouses of the acquired company, with its own, arranged for certain common directors, sales officers and managers, and empowered the salesmen of the two companies, who displayed the names of both concerns on their cards, to take orders for either company's products, the substantial lessening of competition resulting from such unification of sales and production policies and that might result, was not denied either as to the fact or likelihood thereof by the increase in the sales of each concern for the following year.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—RESTRAINT OF COMMERCE CONCERNED "IN ANY SECTION OR COMMUNITY" OR TENDENCY "TO CREATE A MONOPOLY IN ANY LINE OF COMMERCE."

In a proceeding under Section 7 challenging the acquisition by a corporation engaged in interstate commerce, of the stock of another corporation similarly engaged, "where the effect of such acquisition may be to substantially lessen competition" between the two, or "to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce", a showing that the combined business of the two concerns, following the acquisition and merger, increased from percentages of 6.88 and 4.52, respectively, of the bulk of the business in tool steel done by the country's 15 manufacturers of significance therein, to 12.5 percent, did not disclose so substantial a resulting increase in the acquiring company's production in its relation to the whole, as to enable it "to restrain" "in any section or community" the line of commerce in which the two companies had been engaged, or "tend to create a monopoly" therein.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"WHERE EFFECT OF SUCH ACQUISITION MAY BE TO SUBSTANTIALLY LESSEN COMPETITION" BETWEEN CORPORATIONS CONCERNED—REDUCTION OF SMALL NUMBER OF LEADING MANUFACTURERS.

Even though resultant increases in production of two companies, between which there was substantial competition prior to challenged stock acquisition, did not so substantially increase the acquiring company's production in its relation to the whole as to enable it to restrain in any section or community the line of commerce in which the two companies were engaged, or tend to create a monopoly in such line, in which the preponderant part of the business was done by 15 manufacturers, nevertheless the lessening of such competition between the two, following said acquisition and steps taken by the acquiring company towards unification of sales and production policies, was to that extent substantial, and involved a matter of concern to the consuming public in the competition eliminated, since "the reduction in the number of leading manufacturers in a product, especially where the number of such manufacturers is comparatively small, may have consequences the import of which is so subtle that it is only fully determinable after the passage of such time as will allow for the new industrial unit to occupy its place in the changed industrial competitive structure thus created."

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CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—PRE-REQUISITES TO SUSTAIN ORDER—SUBSTANTIAL LESSENING OF COMPETITION—PUBLIC INJURY AND SHERMAN LAW TEST AS PROPER LIMITATIONS.

In a proceeding by the Commission challenging the acquisition by a corporation engaged in interstate commerce of the stock of another corporation similarly engaged, as in violation of Section 7 prohibiting such transactions "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", and in which it develops that the effect thereof "may be to substantially lessen competition", between the two, but not "to restrain commerce" or "tend to create a monopoly" as aforesaid, the facts nevertheless demand an order requiring the offending corporation to divest itself of the stock so acquired, since the political and legislative history of the section, and the language and judicial interpretation thereof, and its preventive and supplementary purpose as thus disclosed, unite in rejecting the view that the lessening of competition referred to must be such as to prejudice the public interest through actual threat of monopoly or restraint.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"COMPETITION"—SALE OF "COMPARABLE AND COMPETITIVE" PRODUCTS—UNIFICATION OF SALES AND POLICIES—REDUCTION OF SMALL NUMBER OF LEADING MANUFACTURERS.

Where a corporation engaged in the sale of tool steel, in which the large preponderance of the business was done by 15 manufacturers, (1) acquired the outstanding capital stock of a second corporation, similarly engaged, with whom it had theretofore been in competition as to at least 22.5 percent of its sales of "comparable and competitive" products, and nearly 54 percent of the latter's sales, and, on the basis of at least one common use for two of their products, as to very much larger proportions, (2) put into effect various steps directed to unification of sales and production policies through common directors, officers, joint sales, warehouse facilities and other steps, following such acquisition and merger, and (3) increased its proportion of the business done by the aforesaid manufacturers, from 6.88 percent and 4.52 percent for the respective separate concerns, to 12.5 percent for the merged businesses, *held*, that such acquisition had the effect that the substantial competition theretofore existing between the two companies was, and might be, substantially lessened, and constituted a violation of Section 7, requiring an order to compel said corporation to divest itself of the stock thus unlawfully acquired.

Mr. Everett F. Haycraft for the Commission.

Mathews & Trimble, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission charges that respondent Vanadium-Alloys Steel Co., hereinafter called respondent, has violated and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Vanadium-Alloys Steel Co. is a corporation organized June 2, 1910, under the laws of the State of Pennsylvania and has its principal office in the city of Latrobe in said State. Respondent owns and operates steel works located at Latrobe, Pa., in which works it manufactures alloy and other forms of steels. Respondent is now and for many years last past has been engaged in the manufacture of alloy and other forms of steels at its said steel works and in selling said products and causing same when sold to be transported from the place of manufacture above described to purchasers thereof located throughout States other than the State where such products are manufactured, and in so doing respondent is and has been engaged in interstate commerce within the purview of said act of Congress (the Clayton Act) in competition with other persons, firms, and corporations. Among such competitors was the Colonial Steel Co. until October 30, 1928, or thereabouts as hereinafter set out.

PAR. 2. The Colonial Steel Co. is a corporation organized June 3, 1901, under the laws of the State of Pennsylvania and has its principal office in the city of Pittsburgh in said State. The Colonial Steel Co. owns and operates steel works located in Beaver County, Pa., in which works it manufactures alloy and other forms of steels. The Colonial Steel Co. is now and for many years last past has been engaged in the manufacture of alloy and other forms of steels at its said steel works and in selling said products and causing same when sold to be transported from the place of manufacture above described to purchasers thereof located throughout States other than the State where such products are manufactured.

PAR. 3. On or about October 30, 1928, respondent Vanadium-Alloys Steel Co. acquired and now owns the entire authorized and outstanding common (voting) capital stock of the Colonial Steel Co., which then consisted of 32,000 shares of common stock of the par value of \$100 each. At and prior to the time of the acquisition by respondent Vanadium-Alloys Steel Co. of the stock or share capital in Colonial Steel Co., each corporation was separately engaged in the manufacture and sale of alloy and other forms of steels in interstate commerce within the purview of said act of Congress in competition with each other and with other persons, firms, and corporations.

PAR. 4. The acquisition by the respondent Vanadium-Alloys Steel Co. of the stock or share capital of the Colonial Steel Co., as hereinbefore set out, was contrary to law and in violation of Section 7 of said act of Congress (the Clayton Act). The effect of such acquisition of said stock or share capital has been and is:

(a) To substantially lessen competition between the Colonial Steel Co., the corporation whose stock was so acquired, and the respondent Vanadium-Alloys Steel Co., the corporation making the acquisition.

(b) To restrain commerce in the sale of alloy and other forms of steels in certain sections or communities of the United States, namely, in those sections or communities among the several States in which respondent Vanadium-Alloys Steel Co. and Colonial Steel Co. were respectively engaged in commerce at the time of such acquisition.

(c) To tend to create a monopoly in respondent Vanadium-Alloys Steel Co. in alloy and other forms of steels.

FINDINGS AND OPINION OF THE COMMISSION

The issues raised by this proceeding for violation of Section 7 of the Clayton Act require an examination of the competitive character of the business of the respondent, Vanadium-Alloys Steel Co., and the Colonial Steel Co. The respondent, a corporation organized under the laws of Pennsylvania in 1910, has since that time been engaged in the manufacture and sale of tools and other high grade steels. It sells its products throughout the United States, concededly in interstate commerce. About October 30, 1928, the respondent acquired all the outstanding stock of the Colonial Steel Co., by increasing its 120,000 no par value shares of common stock to 210,000 and exchanging these 90,000 additional shares for the outstanding 32,500 shares of the Colonial company. This stock acquisition is being challenged by the Federal Trade Commission, by means of a complaint filed on September 19, 1929, as a violation of Section 7 of the Clayton Act.

The Colonial company is also a Pennsylvania corporation, organized in 1901, and engaged in the manufacture of various types of steel, including tool steel. It sells its products in interstate commerce throughout the United States.

Hearings in this case have been held before an examiner of the Commission in Pittsburgh, Chicago, Detroit, Cleveland, Boston, and New York. A voluminous record resulted. The relevant facts it sets forth can, however, be fairly briefly summarized.

The alleged field of competition between the two companies is limited to tool steel. This type of steel, made from carbon or from alloys, is a high grade type of steel designed for use primarily in the manufacture of tools. Much evidence in the record concerns itself with the types of tool steel, the methods of their manufacture, and the equipment of the two companies to produce tool steels of different types, but these details need no elaboration in order to focus for decision the issues presented by this proceeding.

Prior to the acquisition of the Colonial company's stock, the Vanadium company's production was practically confined to tool steels, and its principal output consisted of extra fine and high speed steels, though it also manufactured and sold nondeforming, special alloy and straight carbon tool steels.¹ The Colonial company, on the other hand, manufactured other steels besides tool steels, its output being divided between tool steels and other steels.²

Difficulties are presented by the effort to determine with mathematical accuracy the extent to which the two companies were in competition with reference to the sale of tool steels. One of these arises from the fact that certain consumers of tool steels buy only from manufacturers who are also equipped to furnish tonnage steels, and the Vanadium company, not having this equipment, could not effectively compute for such customers. Another springs from the fact—not, however, peculiar to this industry alone—that customers become wedded to a tool steel of their choice and refuse to use or even experiment with a competitive brand of the same quality.

The greatest difficulty, however, arises from the variety of tool steels and the particular qualities assumed to be attributable to each individual brand of such steel. The record abounds with descriptions of "comparable and competitive" brands of tool steels produced by the two companies rather than purely "competitive" brands.³ A table showing the production of such "comparable and competitive" brands of tool steel by the two companies for the year ending June 30, 1928,⁴ follows [at top of next page]:

The distinction between "comparable" brands and "competitive" brands has evoked considerable dispute. Counsel for the Commission contends, in substance, that these brands are in competition in the sense in which that term is used in Section 7 of the Clayton Act.

¹ The distinguishing characteristics of these types of tool steel are set forth in the record, but elaboration in that respect is not necessary for the purposes of this proceeding.

² The following figures illustrate the nature of the Colonial company's production in this respect:

Output for year ending June 30, 1928

Tool steels-----	\$1, 283, 336. 96
Other steels-----	838, 688. 42

³ The tabular comparisons of "comparable and competitive" brands, found in the record, and in accordance with which the tabular comparison in the opinion has been devised, were prepared upon a basis similar to a classification devised by the American Society for Steel Treathers. Vanadium-Alloys Steel Co. also distributed a book to the trade (Comm. Exhibit 57), entitled "Comparative Brands of Tool Steel", which regarded the above brands as "comparative".

⁴ The chemical symbols in parentheses following the trade name indicate the determining elements. The letters preceding the trade name show: C—Plain Carbon; S—Special Alloy; H—High Speed; N—Non-Deforming. The classifications are according to the Handbook of the American Society for Steel Treathers. In a tabulation, prepared by Edwin F. Cone in the Iron Age for June 16, 1932, the determining elements of the following Vanadium brands are given differently than by the American Society for Steel Treathers Handbook: Marvel (W); Crocar (Cr); Par-Exc (W, Cr); Non-Shrinkable (Mn).

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Vanadium brands	List price per pound	Total value	Colonial brands	List price per pound	Total value
H Red Cut Superior (W, Cr, V).....	\$0.70	\$1,171,808.98	H Beaver High Speed (W, Cr, V).....	\$0.65	\$301,802.91
H Red Cut Cobalt (W, Cr, V).....	1.00	79,367.91	H CoCo (Cr).....	1.00	32,052.42
S Marvel (W, Cr, V).....	.60	83,372.69	S Hot Header No. 3 (W).....	.65	28,321.70
S Crocar (C, Cr).....	.65	80,179.45	S O-Hi-O Die (Cr).....	.60	20,625.96
S Choice (Cr).....	.25	177,800.25	S Header Die, Nos. 35 and 36 (Cr, V).....	.25	14,164.26
S Vanadium (Cr, V).....	.30	33,585.70	S Tungo (W).....	.25	3,093.14
S Par-Exo (W, Cr, V).....	.30	137,776.66	N No. 6 (Mn).....	.30	146,310.85
N Non-Shrinkable (Mn, Cr, V).....	.30	3,585.62	R. S. Tungsten.....	.30	9,182.14
S Valutap (W, Cr, V).....	.25	2,197.81	S No. 7 (V).....	.27	287,231.69
S Colhad (V).....	.22	63,851.34	C Red Star.....	.15	203,285.99
S Special.....	.16	71,666.22	Total.....		1,046,051.06
C Latrobe.....			Other brands of tool steel.....		237,285.99
Total.....		1,905,190.63	Total.....		1,283,336.96
Other brands of tool steel.....		43,990.97			
Total.....		1,954,181.60			

In behalf of that contention, they rely not so much upon evidence as to trade significance attached to the concept of "comparability", as upon the fact that these brands come into actual competition in the market. Thus they introduced evidence that salesmen of both companies solicited the same class of trade and even the same customers, that warehouses were maintained in comparable consuming regions, and that these comparable brands were used by customers for the same purposes.

Respondent contends, on the other hand, that so-called comparability is in itself no evidence of true competition between the brands. Comparability, it says,⁵ refers primarily to steels having the same composition or like physical properties. To be competitive the brands must be usable for the same purposes, possess a like quality and sell at about the same price.

Taking for the moment respondent's contentions, nevertheless competition between certain of Vanadium's brands and Colonial's brands is established beyond peradventure of doubt. James P. Gill, metallurgist for the Vanadium company, conceded that Vanadium's Choice and Colonial's Header Die No. 35 were "both comparable and competitive." In the above tabulation, the value of the sales of these two brands is not separately stated nor is there any evidence in the record from which it can be accurately deduced. But as to several other brands the same witness conceded that the products of the two companies were partially competitive, or competitive in certain fields. These partially competitive Vanadium and Colonial brands were: Marvel and Hot Header No. 3, Crocar and O-Hi-O Die, Non-

⁵This distinction is based upon that adopted by James P. Gill, metallurgist of the Vanadium company, and that urged in respondent's brief.

Shrinkable and No. 6, Valutap and R. S. Tungsten, Special and No. 7, Latrobe and Red Star. Taking the sales of these steels for the year ending June 30, 1928, it will be found, as indicated in the above tabulation, that over 22.5 percent of Vanadium's sales and nearly 54 percent of Colonial's tool steel sales were competitive in certain fields. Furthermore, despite Gill's testimony to the contrary, evidence in the record indicates that Vanadium's Red Cut Superior and Colonial's Beaver High Speed were of practically equal desirability for at least one use.⁶ If this should be deemed to make them "competitive", about 82.5 percent of Vanadium's sales and about 77.7 percent of Colonial's tool steel sales were of competitive products.⁷ Nor can we close our eyes to the fact that similarity with reference to (1) type of tool steel, (2) determining elements, and (3) price, characterizes all these brands of tool steel, as will be seen from the tabulation above. Thus taking a viewpoint of competition, fully in accord with the analyses of competitive products made in *International Shoe Company v. Federal Trade Commission*, 280 U.S. 291, we find that there was substantial competition in tool steel production between the Vanadium company and the Colonial company.

These percentage values give a true concept to the term "competition". Though there may be at the moment no willingness on the part of customers to take one brand instead of another because of a multitude of difference, such as minor variations in quality, prior business relations involving more than the one product, and even the inertia that so often finds high capitalization under the term "good-will", products that at the beginning may only be "comparable" quickly become "competitive" as salesmen become active, markets limited, and manufacturers mould quality and price to meet variant desires. Section 7 of the Clayton Act in terms looks to the lessening of future competition as well as to the suppression of such competition as there may have been in the past. Thus, so far as tool steel production is concerned, the record leaves no room for doubt that Vanadium and Colonial were and might be in substantial competition with each other.

The respondent did not dissolve the Colonial company as a corporation but continued it in existence as a separate corporation with separate offices, board of directors, sales organization, and in the

⁶ Testimony in the record, later alluded to, establishes that since the merger, salesmen of both companies urged customers in instances to take Vanadium's Red Cut Superior in place of Colonial's Beaver High Speed.

⁷ In the calculation of these percentages, the sales of Vanadium's Choice and Colonial's Header Die No. 35 are omitted, since separate figures for them do not appear. Choice together with Vanadium represented about 9 percent of Vanadium's sales and Header Die No. 35 together with Header Die No. 36 accounted for approximately 1.1 percent of Colonial's tool steel sales.

main separate employees. Three directors of the Colonial company were also made directors of the Vanadium company. Some changes were made in the warehouse facilities maintained by the Colonial company prior to the acquisition of its stock by the respondent. The Colonial warehouse at Boston was closed and the warehouse facilities for the New England territory were combined in the Vanadium-Alloys company's warehouse at Springfield, Massachusetts; and the Colonial warehouse at Philadelphia, New York, and Los Angeles were closed and other arrangements made to take care of the business at those points. Some of these changes were made for the purpose of effecting economies, other were brought about by the business depression which gradually grew worse from the beginning of 1930.

Unification to some extent of the sales policies of the two companies has been effected. The vice president of the Vanadium company in charge of sales now occupies a similar position in the Colonial company. The sales forces of the two companies at Detroit and Cleveland have been put in charge of joint sales managers. Salesmen of both companies carry the names of both companies on their cards and can take orders for the other company's products. In some instances customers have been asked to take Vanadium's Red Cut Superior high speed steel in place of Colonial's Beaver high speed. True, the sales of each company were larger for the year ending June 30, 1929—the year after the merger—than they had been for the preceding year, but this denies neither the fact of the lessening of competition nor the likelihood of such lessening occurring in the future. Thus we find that the stock acquisition resulted in a unification of sales and production policies that might result and has to some degree already resulted in a substantial lessening of competition between the two companies concerned.

There are approximately 24 domestic manufacturers of tool steel in the United States, and 7 foreign manufacturers of tool steel sell their products in this country. Of the 24 domestic manufacturers, 15 of these are the significant factors in this industry and manufacture, according to informed opinion, about 90 percent of the domestic tool steel in this country. These fifteen are:

Bethlehem Steel Company.	Halcomb Steel Company.
Braeburn Alloys Steel Corp.	Jessop Steel Company.
Carpenter Steel Company.	Latrobe Electric Steel Co.
Cyclops Steel Company.	Ludlum Steel Company.
Colonial Steel Company.	Midvale Company.
Columbia Tool Steel Company.	Vanadium-Alloys Steel Company.
Crucible Steel Company of America.	Vulcan Crucible Steel Company.
Firth-Sterling Steel Company.	

Figures as to their combined production of tool steel are not set forth as such in these findings. These figures are calculated in a

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fashion which is by no means complete and which cannot be regarded as free from errors due to the lack of adequate reporting by the companies involved. They are, nevertheless, employed as a basis for the following percentage compilations inasmuch as the possibility of such errors in the basic figures plays no part in the final conclusions of the Commission based upon them. Interpreted in terms of a percentage of the total output of these 15 manufacturers, the output of the Vanadium and the Colonial companies for the year ending June 30, 1928, was:

Brands	Vanadium	Colonial
	<i>Percent</i>	<i>Percent</i>
High speed.....	12.19	3.29
Straight carbon.....	1.71	5.45
Nondeforming.....	5.34	5.68
Special alloys.....	4.91	4.96
Total.....	6.88	4.52

Interpreted in similar percentage terms for 1929, the combined output of the two companies shows the following percentages:

	<i>Percent</i>
High speed.....	17.62
Straight carbon.....	8.55
Non-deforming.....	10.12
Special alloy.....	8.44
Total.....	12.50

The resultant increases in the production of the two companies as a result of the stock acquisition did not, in the judgment of the Commission, so substantially increase the respondent's production in its relation to the whole so as to enable it to restrain in any section or community the line of commerce in which the two companies were engaged, and did not tend to create a monopoly in the line of commerce in which the two corporations were engaged.⁸ Nevertheless,

⁸ This finding makes it unnecessary to consider respondent's contention that the question of monopoly should not be judged merely upon the basis of the ratio of the combined output of the two companies of tool steel to total tool steel production but upon the basis of the ratio of the combined output of the two companies of carbon, alloy and electric furnace steel to the total production of such steels in the United States, inasmuch as these steels by proper treatment could be placed in direct competition with the steels produced by Vanadium and Colonial. The percentage of the output of Vanadium and Colonial, separately as well as combined, to such total steel production is given in the following table:

Kind	Colonial	Vanadium	Combined
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Carbon steel.....	0.013	0.0039	0.017
Alloy steel.....	.22	.066	.29
Electric furnace steel.....	.84	.25	1.1

there having been substantial competition between the two companies, the lessening of this competition was *pari passu* substantial and one whose elimination was a matter of concern to the consuming public. The reduction in the number of leading manufacturers in a product, especially where the number of such manufacturers is comparatively small, may have consequences the import of which is so subtle that it is only fully determinable after the passage of such time as will allow for the new industrial unit to occupy its place in the changed industrial competitive structure thus created.

These findings leave only for the basis of an order by the Commission its conclusion of fact that the acquisition of the stock of the Colonial company by the Vanadium company might and did substantially lessen competition between the Vanadium and the Colonial companies. Respondent contends that such a finding is insufficient in law upon which to base an order under Section 7 of the Clayton Act. It contends that the lessening of competition must also be found to be of such an extent that the interest of the public is prejudiced, in the sense that monopoly or restraint is actually threatened. In other words, respondent contends that the test of the violation of Section 7 of the Clayton Act is similar to that applicable under the Sherman Act, in that the Commission must not only find a substantial lessening of competition but also that the effect of the merger was to tend toward a monopoly or to restrain commerce in the products which were prior thereto sold in competition by the two corporations.⁹

Section 7 of the Clayton Act forbids the acquisition by one corporation of the stock of another corporation where the effect of such acquisition "may be (1) to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or (2) to restrain such commerce in any section or community, or (3) tend to create a monopoly of any line

⁹Had law that consistency that the lay mind attributes to it, it should be sufficient answer to the respondent's contention to quote the following expression of the Supreme Court, bottomed upon an earlier statement by it to the same effect, in *Standard Fashion Co. v. Magrane Houston Co.*, 258 U.S. 346, 355-356, (1922) :

"The Clayton Act, as its title and the history of its enactment disclose, was intended to supplement the purpose and effect of other antitrust legislation, principally the Sherman Act of 1890 . . .

"As the Sherman Act was usually administered, when a case was made out, it resulted in a decree dissolving the combination, sometimes with unsatisfactory results so far as the purpose to maintain free competition was concerned.

"The Clayton Act sought to reach the agreements embraced within its sphere in their incipency, and in the section under consideration to determine their legality by specific tests of its own which declared illegal contracts of sale made upon the agreement or understanding that the purchaser shall not deal in the goods of a competitor or competitors of the seller which may 'substantially lessen competition or tend to create a monopoly'."

of commerce." The parenthetical numerals have been inserted in order to make plain the evident parsing of these clauses, for grammatical interpretation, as high authority still avows,¹⁰ has its uses in statutory interpretation. The legislative history of this section¹¹ leaves no doubt as to its purport. Its origin is traceable beyond the initiation of the legislation itself—to the program of a great political party.¹² Upon the accession of that party to power, this program was made concrete by legislation. The records of the House¹³ and the debates the section evoked, however, demonstrate that an evil sought to be curbed by the section was that of corporate holding of corporate stocks to effect a merger that would lessen competition that might otherwise be substantial.¹⁴ Avowedly the purpose was to go beyond the criteria of the Sherman Law;¹⁵ the

¹⁰ Especially is this deemed to be so of the Clayton Act. Thus the court said of this act in *Standard Fashion Co. v. Magrane Houston Co.*, 258 U.S. 346, 355 (1922): "Much is said in the briefs concerning the reports of committees concerned with the enactment of this legislation, but the words of the act are plain and their meaning is apparent without the necessity of resorting to the extraneous statements and often unsatisfactory aid of such reports."

¹¹ The Supreme Court has again and again adverted to legislative history as a guide to the interpretation of ambiguous language. *St. Louis S.W. Ry. v. United States*, 262 U.S. 70, 76 (1923); *United States v. St. Paul M. & M. Ry.*, 247 U.S. 310 (1918); *Penn Mut. L. Ins. Co. v. Lederer*, 252 U.S. 523; *United States v. Pfisch*, 256 U.S. 547 (1921).

A fortiori it is permissible to support the plain and grammatical meaning of a statute.

¹² The National Platform of the Democratic Party adopted at the Baltimore Convention in 1912 said: "We regret that the Sherman Antitrust Law has received a judicial construction depriving it of much of its efficiency, and we favor the enactment of legislation which will restore to the statute the strength of which it has been deprived by such interpretations."

¹³ Section 7 as introduced into the House (then being Section 8) read as follows: "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 is to eliminate or substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to create a monopoly of any line of trade in any section or community." No changes were made in this provision in the House.

¹⁴ Compare, for example, the following from the minority report on this section which makes clear that monopoly or restraint of trade were not the sole tests applicable to the unlawful acquisition of stock:

"The only possible excuse and justification for legislation against holding companies lies in the fact that the holding company intended to be reached by the law creates a monopoly, or attempts to do so, or restrains interstate trade.

"This proposed law, however, would make the acquisition of stock by one corporation in another in the same line of business, and although the two corporations taken together would form in their united business an infinitesimal fragment of the business of the locality in that particular line, a crime punishable by fine and imprisonment."

¹⁵ Compare the following from Mr. Carlin's speech in the House:

"We have supplemented the language of the statute and taken a forward step. We have gone forward, not backward. The Sherman law in its operation is limited to three things: First, a contract or combination in the form of a trust or otherwise; second, a conspiracy in restraint of trade; third, an attempt to monopolize. There is nothing about competition in the Sherman law. There must be actual restraint of trade under the Sherman law to bring anyone under either its civil or criminal process.

"Under this bill there has to be only a lessening of competition. Competition may be lessened without restraint of trade. Competition may be lessened without attempt to monopolize. Competition may be lessened without conspiracy. It may be the natural

real fear was that the language chosen might relax the requirements of that act.¹⁶ In the Senate these objections were made even more apparent. Fear of restrictive judicial interpretation of the section was pronounced.¹⁷ In order that the proof that the acquisition of such stock resulted in the lessening of competition between the two corporations might not be too difficult,¹⁸ and that potential as well as actual lessening of competition would satisfy the requirements of the statute,¹⁹ the Senate by one amendment substituted the words "may be" for "is",²⁰ and by another eliminated the qualifying term "substantially."²¹ The restoration²² of this qualification in conference was not deemed to cut down upon the force of the rule²³ that "will save the little man, and yet it will reach the people who

effect of the putting together in close relationship through a holding company of two corporations that are natural competitors, or ought to be. Yet there would not be restraint. So, instead of subtracting from the Sherman law, as the gentleman has told the country, we have added to the Sherman law a most effective rule, by which the actions of these combinations in the future may be determined; but still, with due regard to the gentlemen who have come to love the Sherman law, we have left it intact, and have said by an express provision of our bill that nothing in our bill shall be construed to alter, amend, or repeal the Sherman law. It is as effective now as it has ever been." (51 Cong. Rec. 9270-71.)

¹⁶ Thus Mr. Nelson objected to the narrowing provision of the section which required the lessening of competition to be actual rather than merely potential—an objection which was cured by the Senate amendment substituting "may be" for "is"; "Moreover, this section makes the test of a holding company's illegality not whether it has potential power to lessen competition, in substance held to be the law in the Northern Securities case, but instead it introduces a new element, and a dangerous one, whether the holding company actually uses that power with the effect of substantially lessening competition. Upon this test the Northern Securities case would probably have gone against the Government, and it will hereafter be exceedingly difficult to prove that a holding company is illegal." 51 Cong. Rec. 9189. Mr. Volstead and Mr. Green expressed the same views. *Id.* 9078, 9201, 9596.

¹⁷ See e.g. Poindexter in 51 Cong. Rec. 14314.

¹⁸ See e.g. Cummins in 51 Cong. Rec. 4255.

¹⁹ Senator Reed, in proposing the amendment which struck out the word "is" and substituted the words "may be", made the following statement: "My reason for offering the amendment is this: The law, as I understand it, is that a combination is illegal where the effect may be as well as where it is. I understand that the chairman of the committee is prepared to accept the amendment." 51 Cong. Rec. 14464. Upon the chairman of the committee stating that he had no objection to the amendment, it was immediately agreed to without objection. *Ibid.*

²⁰ See note 19 *supra*.

²¹ 51 Cong. Rec. 14465, 14473.

²² The section as passed by the Senate, showing the Senate amendments eliminating matter by striking the same through and showing additional matter in italics, read as follows: "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 lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or tend to create a monopoly of any line of commerce."

²³ Such objections as were voiced to the restoration of "substantially" were based upon the fear that it would permit the Supreme Court to interpolate into this section qualifications akin to those that had been interpolated by that Court into the language of the Sherman Act. See e.g. Reed in 51 Cong. Rec. 15856-7; Norris in 51 Cong. Rec. 16047.

are trying to break up their competitors.”²⁴ At no time in the course of these legislative proceedings was there any thought that more than a substantial lessening of competition was needed to be proven in order to warrant the issuance of an order compelling a corporation to divest itself of the stock of another corporation, nor was there any suggestion that “substantial” competition was that type of competition whose lessening or elimination would tend to monopoly or result in restraint of commerce in the products involved.

The plain language of Section 7 in this respect found, in the beginning, courts ready to give it effect. In *Aluminum Co. of America v. Federal Trade Commission*, 284 Fed. 401 (3d. Circ., 1922),²⁵ Judge Woolley, speaking for the court, said:

But the lessening of competition is not the only effect of the acquisition of stock of another which Congress sought to avoid. It intended as well to prevent a transaction “where the effect” may “tend to create a monopoly.”

* * * This is for the reason that the lessening of competition and a tendency

²⁴The Conference committee's action on the section is thus explained by Senator Chilton of the committee:

“The Senate, however, Mr. President, adopted as its criterion the following, ‘where the effect may be to lessen competition.’ In other words, the Senate struck out ‘eliminate’ and ‘substantially.’ My judgment is that there is very little difference between the two. To lessen is to substantially lessen. Competition is everywhere. A pleasant word, prompt and quick service are both methods of competition. If a competitor takes one customer away, it is lessening, and possibly ‘substantially’ lessening competition; because when one customer shall be secured by one of the competitors to that extent there may be no competition. But when House section 8, which is Senate section 6, came to conference the House conferees insisted that the words ‘eliminate’ or ‘substantially lessen competition’ should be the standard. The Senate conferees insisted that the language of the Senate should be adopted, to wit, ‘where the effect may be to lessen competition.’ As always happens with men of ordinary sense, with men who want to carry out as best they can the instructions of their superiors, the conferees had to find some common ground upon which their minds could meet, and the result was a compromise, which is Section 7 in the bill reported by the conferees. That compromise was the adoption of the words ‘may be’ instead of the word ‘is’, so that instead of reading ‘where the effect is’ the bill now reads, ‘where the effect may be’; that is, where it is possible for the effect to be, which was a decided victory for the Senate. We struck out ‘eliminate,’ which was another victory for the Senate. We left in the word ‘substantially’, which was a victory for the House; but the House conferees insisted that that would change the section and would not accomplish the purpose intended by it; that a corporation might acquire the stock of another corporation, and there would be no lessening of competition, but the tendency might be to create monopoly or to restrain trade or commerce, and therefore there was added to the definition the following: ‘Or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce.’

“Now, Mr. President, does anyone want to have any better law than that? There is a clear-cut rule fixed that will save the little man, and yet it will reach the people who are trying to break up their competitors. In other words, as regards holding companies, the bill as reported makes the holding of stock in another company unlawful ‘where the effect may be to substantially lessen competition or to restrain commerce or tend to create a monopoly.’ In my judgment, the language of the conferees is much better than the language adopted by either House; the definition is clearer, and gets at the evil intended to be corrected; and, to be perfectly candid with the Senate, I like it because it saves the small business man, who does not want to restrain trade and would not, if he could, create a monopoly.”

²⁵Certiorari was denied in this case in 261 U.S. 616.

to monopoly are not always synonymous. There may be a lessening of competition between two corporations in a stock transaction that does not tend to monopoly (p. 407).

Three years later in *Swift & Co. v. Federal Trade Commission*, 8 F. (2d) 595 (7th Circ., 1925),²⁰ Judge Evans, speaking for the court, thus disposed of the contention of petitioner that more than a substantial lessening of competition had to be proved in order to support the Commission's order:

These findings (that the effect of the stock acquisition was to substantially lessen competition between the corporation whose stock was acquired and the corporation making the acquisition) would necessarily dispose of the application were it not for petitioner's insistent urge that the statute does not mean what it says, and that the court should read into it "the rule of reason" and insert additional requirements, viz, that the competition between the two companies prior to consolidation was substantial, and the effect of the acquisition was injurious to the public . . .

The statute does not prohibit all acquisitive contracts. It is only when such acquisition produces "the effect" described that the statute condemns. It is worthy of note that such effect may be either to (a) substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition; (b) restrain such commerce in any section or community; or (c) tend to create a monopoly of any line of commerce. (a) Can not be construed without considering (b) and (c). If the court were to read into (a) the elements which petitioner has asked us to insert, what would become of the requirements of (b) and (c)? . . .

We are still dealing with words of general meaning and make no progress. Must Congress act only when the child has grown to the stature of a giant? If authority exists to curb—or to dissolve—a corporation when it has reached the trust stage, may Congress not take steps to arrest the corporation's growth before the final stage has been reached? . . .

Judge Alschuler, concurring, gave voice to the same thought:

. . . Be that as it may, this can not suspend or avoid the very broad and sweeping statute which denounces acquisition by one corporation of the stock of another, or of the stock of two or more other corporations, where this may substantially lessen competition between them, or restrain commerce in any section or community, or tend to create monopoly in any line of commerce. If an exception to the operation of the statute ought and is to be raised in cases where the concern whose stock is acquired is comparatively small, or weak, or for any reason unlikely long to endure, it must come through statutory enactment, and not by judicial construction.

Counsel for the corporations in these cases continued, however, to press the courts upon appeal from the Commission for the encrustation of the "rule of reason" upon the test laid down in Section 7 of the Clayton Act. In *International Shoe Co. v. Federal Trade Commission*, 29 F. (2d) 518 (1st Circ. 1928), the Circuit

²⁰ This case was reversed, four Justices dissenting, upon another ground in 272 U.S. 554 (1926).

Court of Appeals for the First Circuit, adding its voice to that of the third and seventh circuits, rejected such a contention, returning once more to the plain language of Section 7:

Finally, petitioner argues that no such case of monopoly or damage to the public interest is made out as would ground a case under the Sherman Act. A sufficient answer is that the case is not brought under the Sherman Act, but under the Clayton Act, and "the Sherman Act and the Clayton Act provide different tests of liability." *United Shoe Machinery Co. v. United States*, supra.

The International Shoe case was, however, carried to the Supreme Court and, since it is upon the basis of remarks contained in the opinion of the Supreme Court in that case upon which the contention is now made that something more than a substantial lessening of competition must be proved in order to support an order under Section 7, the opinion must be examined with care. The Supreme Court first overturned the finding of the Commission, which had been concurred in by the First Circuit Court of Appeals, that substantial competition had existed between the International Shoe Co. and the W. H. McElwain Co. Examining with meticulous refinement the character of goods sold by the two companies and the markets in which they had thitherto sold their goods, the Court concluded that competition between them existed only with reference to 5 percent of the McElwain company's product. "It is hard to see in this", said the court, "competition of such substance as to fall within the serious purposes of the Clayton Act." *International Shoe Co. v. Federal Trade Commission*, 280 U.S. 291, 299 (1930). This, in itself, was sufficient to dispose of that part of the Commission's order based upon the ground that the stock acquisition resulted in the substantial lessening of competition between the two companies. Nothing in this phase of the case, save for what is mentioned below, can be regarded as advancing the respondent's contention.

The Commission's order under Section 7 can, however, have different foundations than that of substantially lessening competition between the two corporations concerned. It can be based, according to the plain language of Section 7, upon the ground that it restrains interstate commerce in any section or community, or tends to create a monopoly of any line of commerce. True, the substantial lessening of competition is alone sufficient and a finding to that effect will support the order. The First Circuit Court of Appeals, concurring in a finding to that effect by the Commission, had no need to examine additional grounds which might be adduced to support the order. But the Supreme Court of the United States, failing to concur in that

finding, had appropriately to consider other grounds which might be adduced to support the order.²⁷ This it proceeded to do in the second phase of the International Shoe case. Its conclusions in this respect may best be summarized in the language of the court itself:

In the light of the case thus disclosed of a corporation with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure with resulting loss to its stockholders and injury to the communities where its plants were operated, we hold that the purchase of its capital stock by a competitor (there being no other prospective purchaser), not with a purpose to lessen competition, but to facilitate the accumulated business of the purchaser and with the effect of mitigating seriously injurious consequences otherwise probable, is not in contemplation of law prejudicial to the public and does not substantially lessen competition or restrain commerce within the intent of the Clayton Act (pp. 302-303).

Standing by itself this language might be considered as advancing the respondent's contention, but viewed in the light of the whole record and the issues that the Court was called upon to decide, it fails to be relevant in a case where substantial lessening of competition is established. The same may be said of respondent's contention based upon a quotation from the Court's opinion in the first phase of the International Shoe case:

Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U.S. 346, 357; *that is to say, to such a degree as will injuriously affect the public.* Obviously, such acquisition will not produce the forbidden result if there be no pre-existing 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* (p. 298).

The italicized parenthetical expressions, says respondent, reinforce its contention. But such meaning as may be implicit in these expressions is to be gathered from the four corners of the entire case, especially in view of the fact that the Court, a few sentences later,

²⁷ Paragraph 23 of the findings of fact by the Commission in the International Shoe case read as follows:

"The effect of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company was:

"(a) To substantially lessen competition in commerce between International Shoe Company and W. H. McElwain Company in the sale of dress shoes for men.

"(b) To restrain commerce in the shoe business and especially in that part of such business relating to the sale of dress shoes for men in various sections or communities of the United States in which International Shoe Company and W. H. McElwain Company were engaged in commerce.

"(c) To restrain commerce in the shoe business sections or communities of the United States including Columbus, Ohio; Kansas City, Mo.; and San Francisco, Calif., and in other sections or communities adjacent thereto."

The legal conclusion of the Commission was a general one to the effect that the findings proved a violation of Section 7 of the Clayton Act. See 9 F.T.C. 453-4, 462 (1925).

expressly states that "the existence of competition is a fact disclosed by observation rather than by the processes of logic". . . . To give parenthetical expressions of this type the force of law in the way which respondent urges upon us, would be to attach to observations not essential to the decision of the issue before the Court and themselves capable of varying interpretations, a content contrary to the plain language of Section 7 of the Clayton Act. To do so, moreover, would be to assume that the Court was qualifying the language of the section in a way that is not justified by a knowledge of the legislative travail out of which it was born, and contrary to the express tenets of a comprehensive political program. Judicial power does not extend that far.

Prior to 1930, the lower courts unanimously refused to read into that section any such qualification. It is true that since the International Shoe decision, expressions capable of being interpreted to contain an import equivalent to respondent's contention are to be found in the decisions of certain lower courts. Thus Judge Manton, speaking for the Second Circuit Court of Appeals, in *V. Vivaroudon v. Federal Trade Commission*, 54 F. (2d) 273 (2d Circ., 1931,) stated:

The question presented on this appeal is whether the competition between these companies has been substantially lessened by reason of the stock acquisition and ownership referred to, and whether the public has been injuriously affected . . . Unless there be a monopoly or tendency toward monopoly, we would not be warranted in concluding that the public had an interest as referred to in the statute.

The first statement only paraphrases the quotation above referred to in the International Shoe case. With reference to the second sentence, it is sufficient to observe that Section 7 of the Clayton Act, which is the sole source of this jurisdiction of the Commission, reads in the disjunctive and not the conjunctive and does not possess any such "public interest" clause as is intimated. What has happened is that there has been an unconscious transposition of the "public interest" qualification of Section 5 of the Federal Trade Commission Act to Section 7 of the Clayton Act.²⁸

Temple Anthracite Coal Co. v. Federal Trade Commission, 51 F. (2d) 656 (3rd Circ., 1931) lends no support to the respondent's contention. In that case the Commission's ultimate finding of fact was overturned by the court. The Commission had concluded that the Temple Coal Co. and the East Bear Ridge Colliery Co. were in sub-

²⁸ In *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 65 F. (2d) 336 (2d Circ., 1933), where the Commission's order was affirmed, the same judge, however, relying on the International Shoe case, gives a content to the term "public interest" wholly in accord with the basic objectives of Section 7, for there it is stated that "if there is real substance in the competition, the public interest is affected" (p. 340). This case is now on certiorari before the Supreme Court.

stantial competition with each other. But the evidence showed only that Thorne, Neale & Co., Inc., who sold the coal of the Temple Coal Co., and Madeira, Hill & Co., who sold the coal of the East Bear Ridge Co., were in substantial competition. The evidence showed also, according to the court, no substantial lessening of competition between Thorne, Neale & Co., Inc., and Madeira, Hill & Co. The conclusions of the court are aptly set forth in the following excerpt from its opinion, and support in no way²⁹ the respondent's contention in this proceeding:

We cannot conclude, because of the ownership in one corporation of the stock of two corporations whose output is sold under contracts with competing wholesalers as distributors, who are found to be in active competition, that these contracts will or are likely to be annulled or terminated. We must take the facts as they exist, and, finding as we do that Thorne, Neale & Co., Inc., and Madeira, Hill & Co. are in active competition, we assume that the interests of the public will be preserved so long as that competition continues.

The Commission found in paragraph 10 of its finding of fact as follows: "The effect of the acquisition by respondent Temple Anthracite Coal Company of the said capital stocks of said Temple Coal Company and of said East Bear Ridge Colliery Company, and the use of such stocks by the voting or granting of proxies, or otherwise, has been and is to substantially lessen competition in interstate commerce between said Temple Coal Company and said East Bear Ridge Colliery Company".

With no evidence in the case to support the finding of fact that the effect of the acquisition of the stock "has been and is to substantially lessen competition", our conclusion is that the actual active competition which is shown by the evidence, without contradiction, to have existed and to continue to exist between Thorne, Neal & Co., Inc., and Madeira, Hill & Co., negatives, so long as it may exist, the very effect which the Commission has found to be caused by the acquisition by the Temple Anthracite Coal Company of the capital stocks of the mining companies.

The finding of the Commission thus being that there was substantial competition between the Vanadium and the Colonial companies, and that that competition was and also might be substantially lessened by the acquisition of the stock of the Colonial company by the Vanadium company, and the Commission being of the opinion that such acquisition was consequently in violation of Section 7 of the Clayton Act, an order must issue compelling the Vanadium company to divest itself of the stock of the Colonial company thus unlawfully acquired.

²⁹ Incidental language can conceivably be interpreted to support the respondent's contention, but such expressions form no part of the *ratio decidendi* of the case. Judge Woolley, dissenting, remarked upon such occasional language that might be susceptible of the construction contended for in the following fashion:

"In arriving at the conclusion that the evidence sustains the order of the Commission I have kept in view the fact, at different times lost sight of in this case, that we are not concerned with the lessening of competition between these two companies and other companies in the industry, but are concerned with the lessening of competition between the two companies themselves."

ORDER TO CEASE AND DESIST AND TO DIVERT CAPITAL STOCK

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence, briefs and arguments of counsel, and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondent Vanadium-Alloys Steel Co. has violated the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes",

Now, therefore, it is hereby ordered, That the respondent, Vanadium-Alloys Steel Co., forthwith cease and desist from violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and within six months from the day of the date of the service upon it of this order, divest itself in good faith of all of the capital stock of the Colonial Steel Co. owned by it and of all its interest in the capital stock of the said Colonial Steel Co., such divestment of such stock and of interest in such stock to carry with it all of the business, property and assets of all kinds whatsoever of said Colonial Steel Co., and to be so made that said Vanadium-Alloys Steel Co. shall not retain, directly or indirectly, any of the fruits of its acquisition of said capital stock of said Colonial Steel Co.

And it is hereby further ordered, That such divestment of the capital stock and of interest in the capital stock of said Colonial Steel Co., shall not be made directly or indirectly to any stockholder, officer, director, employee, or agent of, or to any one otherwise directly or indirectly connected with or under the control of, the respondent Vanadium-Alloys Steel Co., or to any corporation affiliated with, or subsidiary to, said Vanadium-Alloys Steel Co., or to any stockholder, officer, director, employee, or agent of, or to any one otherwise directly or indirectly connected with or under the control of any corporation affiliated with or subsidiary to, said Vanadium-Alloys Steel Co.

And it is hereby further ordered, That respondent Vanadium-Alloys Steel Co., shall within six months from the day of the date of 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 conformed to this order.

IN THE MATTER OF
CECIL B. BOND, TRADING AS WORLD WOOLEN COM-
PANY, INTERNATIONAL WOOLEN COMPANY, DUPLEX
CLOTHES, C. B. BOND, AND C. BOND

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

Docket 2100. Complaint, Apr. 17, 1933—Order, Feb. 5, 1934

Consent order requiring respondent to cease and desist representing to purchasers or prospective purchasers, directly or indirectly in connection with the offer or sale of clothes in interstate commerce, that (1) such clothes have been, are, or will be (a) tailor made in accordance with the measurements of the individual ordering them, unless such is the fact; or (b) made from or out of cloth selected by purchasers from samples submitted to them by respondent or his salesmen or his solicitors, unless such is the fact; or (2) that a store is about to be or will be opened by respondent in the locality or localities in which any purchasers reside at which store or stores clothes purchased from respondent can and will be fitted or altered, unless such is the fact.

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 Cecil B. Bond, trading as World Woolen Company, International Woolen Company, Duplex Clothes, C. B. Bond, and C. Bond, 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 Cecil B. Bond has been and is an individual residing and having his office and principal place of business in the City and State of New York. He has been for several years last past, and now is, engaged in the sale and distribution of men's clothes in commerce among and between the various States of the United States, under the name of "World Woolen Company", "International Woolen Company", "Duplex Clothes", "C. B. Bond", and "C. Bond." He has caused and causes such clothes, when sold by him by, through, or under any of such trade names, to be transported from his place of business in the City and State of New York to purchasers located in the various other States of

the United States than the State of New York. In the course and conduct of his business in or by such trade names, or any of them, the respondent has been, is, and at all times hereinafter mentioned was engaged in competition with individuals, partnerships, and corporations offering for sale or selling men's clothes in interstate commerce. His business has consisted only to a negligible extent, if at all, in filling so-called repeat orders, and no effort has been, or is made by respondent to satisfy customers so as to retain their patronage or to secure repeat orders.

It has been and is the practice of respondent, as one of his particular methods of competition, to adopt and use various trade names for his business, and in connection therewith to follow the other method of competition described in paragraph 2 hereof, until the particular trade name or trade names so used, has or have acquired unfavorable notoriety, and thereupon to adopt a new trade name or trade names and to carry on the same type of business as had been, or was his practice theretofore until the new names so adopted and used have become unfavorably known to the public, whereupon, in pursuance of his said method of competition, still another name or other names would be and are used in offering for sale and selling men's clothes. As examples of such method and practice respondent, Cecil B. Bond, on November 30, 1927, duly registered, in accordance with the laws of the State of New York, as a trade name "Lasalle Gold Seal Clothes" with his address as 527 Broadway, New York, N.Y. On June 4, 1928, he duly registered as a trade name "Rialto Clothing Company", 94 Spring Street in said city, and State. On January 3, 1931, he duly registered as a trade name "International Woolen Company", 525 Broadway, and with his residence stated as 1483 College Avenue, New York, N.Y. On April 27, 1931, he duly registered as his trade name "Duplex Clothes", 640 Broadway, with his residence stated as Victoria Hotel, New York, N.Y. On November 12, 1931, he duly registered as a trade name "World Woolen Company", 640 Broadway, with his residence given as 1000 Anderson Avenue, New York, N.Y. On June 6, 1932, he duly registered as a trade name "C. Bond", 640 Broadway, New York, N.Y., with his residence given as 1005 Jerome Avenue. Should respondent continue or be allowed to continue this practice as one of his methods of competition, it is only a question of time when his trade names of "World Woolen Company", "International Woolen Company", "Duplex Clothes", "C. B. Bond", and "C. Bond" will be discontinued and others adopted in their stead.

PAR. 2. It has been and is the practice of respondent Cecil B. Bond to sell his clothes by and through the agency of salesmen or solicitors in the various States of the United States.

Such salesmen or solicitors have offered for sale and sold the clothes of respondent in the various States of the United States in the course and conduct of his business, and acting under his direction and with his knowledge and consent, it has been and is their practice to represent, to purchasers and prospective purchasers, that clothes furnished by respondent, in pursuance of orders given to them, would be and are tailor made or made to their individual measure.

In truth and in fact the suits of clothes sold and distributed by respondent have not been and are not tailor made, have not been and are not made according to the measurements of purchasers or according to the measurements contained in orders received by respondent from purchasers through his solicitors or salesmen. On the contrary, clothes sold and distributed by respondent have been, were at all times herein mentioned, and are, ready-made clothes which have not corresponded and do not correspond with the measurements of purchasers, have not been and are not altered to fit purchasers, and have not fitted and do not fit them. There have been and are clothes sold by respondent in such disregard of, or lack of conformity to, the measurements of individuals ordering the clothes through agents or solicitors of respondent, that garments delivered by respondent to them have been, in numerous instances, so unfitted to purchasers as to appear ludicrous and, in many instances, even grotesque when worn by them.

It has been and is the practice of respondent to represent as inducement for the purchase of his clothes that suits ordered by purchasers will be made from or out of cloth represented by or corresponding with samples selected by purchasers or individuals ordering clothes of respondent from samples exhibited to them by his agents, solicitors, or salesmen.

In truth and in fact it has been and is the practice of respondent to deliver to purchasers, on receipt of orders for clothes, suits which had not been, have not been, were not, and are not made from or out of the cloth selected, and which have not corresponded and do not correspond with the sample exhibited, by respondent's agents, salesmen, or solicitors, to and selected by the purchaser.

It has been and is the practice of respondent to represent to purchasers and prospective purchasers that alterations of suits purchased from him could and would be made for the purchasers at a store or stores of respondent which, it was represented, was or were about to be opened within a short time thereafter in the particular locality in which the purchaser or prospective purchaser resided.

In truth and in fact respondent has neither opened, operated, conducted, nor expected or intended to open a store or stores in such locality or localities, or any of them.

PAR. 3. The acts and practices of respondent described in paragraph 2 hereof have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief, and to induce purchase of respondent's products in reliance on such belief, that suits of clothes ordered from respondent would be tailor made or made to individual measure of purchaser, from and out of cloth represented by and corresponding with the sample thereof selected by customers from samples of cloth exhibited to them by salesmen or agents of respondent; and that necessary alterations desired by the purchaser of the suit or suits furnished by respondent could and would be made at branch places of business thereafter shortly to be established by respondent within convenient or easy reach of the purchaser.

The aforesaid acts and practices of respondent have had and have, and each of them has had, and has the capacity and tendency to divert trade to respondent from competitors selling suits of men's clothes in interstate commerce by fair and truthful representations.

PAR. 4. The acts and practices of respondent as described in paragraph 2 hereof are all to the prejudice of respondent's competitors and the public and have been and are unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard upon the complaint and the amended answer of respondent wherein he waives hearing and right to contest the proceeding and consents, in pursuance of the Rules of Practice (III. Answers, paragraph 2), that the Federal Trade Commission may make enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint and the Commission having considered the record and being now fully advised in the premises:

It is ordered, That Cecil B. Bond, trading either as Cecil B. Bond or C. B. Bond or C. Bond or World Woolen Company or International Woolen Company or Duplex Clothes or by, with, or under any other name or trade name, cease and desist in connection with offering for sale or selling clothes in interstate commerce from representing to purchasers or prospective purchasers, directly or indirectly,

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(a) That such clothes have been, are, or will be tailor made in accordance with the measurements of the individual ordering them, unless such is the fact.

(b) That such clothes have been, are, or will be made from out of cloth selected by purchasers from samples submitted to them by respondent or his salesmen or his solicitors, unless such is the fact.

(c) That a store is about to be or will be opened by respondent in the locality or localities in which any purchasers reside at which store or stores clothes purchased from respondent can and will be fitted or altered, unless such is the fact.

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

Syllabus

IN THE MATTER OF
THAYER PHARMACAL 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 1980. Complaint, Oct. 19, 1931—Decision, Feb. 6, 1934

Where a corporation engaged in the manufacture and sale of perfumes, creams, face powders and other toiletries,

- (a) Represented that certain preparations dealt in by it were of French origin, and made in and imported from France and the products of French houses and famous French cosmeticians, through such statements in their advertisements as "Mons. Henri's Birthday Offer For 'Les Madames et Made-moiselles Americaines'", "*Two Bottles* of imported French perfumes," "French Perfume and Face Powder Maison Andre, French Perfumer Introduces His Newest *Narcissus*", "And now from France, comes the most startling beauty discovery of the century by the famous Felix Laroche, world-known Parisian Cosmetician"; the facts being that the aforesaid preparation and others similarly referred to were neither imported nor of French origin, but were domestic products compounded, prepared and packaged at its place of business in the United States, and the supposed French perfumers and establishments referred to were entirely fictitious;
- (b) Represented its products as sold at reduced prices for the purpose of introducing the same through such statements as, "A Very Rare Bargain By Mail Only. 10 Everyday Beauty Needs 99¢. \$7.75 Total Value. Your One Chance to Get All This for 99¢." "Bring this coupon and only 98¢—which merely helps to pay our local advertising campaign, special sales-ladies, expenses, etc. and we will give you Free, without further cost, *Two Bottles* of imported French perfumes * * * each regular \$2 full ounce bottle, and also a \$1 box of Youthful Glow—the world's most exquisite face powder," "Manufacturers' Introductory Sale * * * Formerly Two to Three Times This Price. Both for 98¢," \$4.50 value only 98¢. Cleansing Cream—Regularly 75¢. Face Powder—Regularly \$1.00. Tissue and Astr. Cream—Regularly 75¢, Narcissus Perfume—Regularly \$2.00"; the facts being that the aforesaid purported reduced and bargain prices constituted its regular and usual prices for its products sold by it in combination lots, as aforesaid;

With capacity and tendency to confuse, mislead and deceive the members of the public into believing that the said preparations had been imported from France and were products of French perfumers or cosmeticians, the persons named as originators thereof were real persons, and the prices named were special prices and lower than those at which said preparations were ordinarily sold by it, and to induce members of the public to buy and use such products because of the erroneous beliefs thus engendered, and to divert trade to it from competitors engaged in sale in interstate commerce of perfumes, cold creams, face powders and other cosmetics, including those who in no wise misrepresented the origin, make, kind and prices of their competing products, and with effect of diverting business to it from such competitors, to their substantial injury and prejudice:

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Held, That such 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. Everett F. Haycraft for the Commission.

Mr. Gustav E. Beerly, 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, for more than one year last past, in the manufacture and sale of perfumes, powders, lotions, and other toiletries to purchasers in the various States, and with principal place of business in Chicago, with advertising falsely or misleadingly as to source or origin, price, and qualities 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 in the manufacture, in this country, of its aforesaid products, and in the sale thereof in competition with those engaged in importation and sale of genuine French perfumes, powders, etc., falsely represents in periodicals of wide interstate circulation, and in advertising matter issued and published to the trade and public that its said domestic products are of French origin, made in and imported from France, and a creation of famous French cosmeticians known as Mons. Henri, Mons. Carl, Maison Andre, and others, and had been and were being sold at certain prices, which had been reduced to introduce the same, facts being said products, as aforesaid, were made at its place of business in this country, and had never been sold at the prices stated, and the persons referred to as the creators or sponsors of said preparation were fictitious.¹

Respondent further, as charged, "has caused its said products to be widely advertised in periodicals having interstate circulation by its customers, local druggists", in which, in addition to the aforesaid false and misleading representations, it has represented that "its 'Cream of Creams' was developed through five years of research by the famous Felix Laroche of Paris and when it is used no other

¹ As alleged in the complaint "For a number of years last past, and at all times herein mentioned and referred to, there has existed and now exists a keen demand in the trade and purchasing public of the United States for perfumes, powders, lotions, creams, and other toiletries manufactured in France and imported into the United States, because of the high quality of said products and of the fame of French cosmeticians; said products being usually sold in the United States at extremely high prices."

beauty aid is needed", the facts being that said "Cream of Creams" is an ordinary cream and will not meet all beauty requirements.

Use by respondent, as alleged, of such false and misleading statements and representations "has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent's said products are manufactured by famous French cosmeticians, imported into this country and sold at relatively high prices to the trade and purchasing public, and are now being offered to the public at special reductions to introduce them, and that in the case of 'Cream of Creams' no other beauty aid is needed, and to induce the said purchasing public to purchase respondent's said products, relying upon that belief, in preference to perfumes, powders, creams, lotions and other toiletries being offered for sale by said respondent's competitors", all to the injury 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 19th day of October, 1931, issued its complaint against the respondent herein, the Thayer Pharmacal Co., charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed. A brief was filed on behalf of the Commission. No brief was filed by respondent although opportunity for filing the same was duly given and the time for filing same expired June 3, 1933.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Thayer Pharmacal Co., is a corporation organized, existing, and doing business under and by virtue

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of the laws of the State of Illinois, with its principal place of business located in the city of Chicago in said State. Said respondent is now and for more than five years last past has been engaged in the manufacture of perfumes, cold creams, face powders, and other toiletries and in the sale and distribution thereof in commerce between and among the various States of the United States, causing said products when sold to be shipped from its said place of business in the State of Illinois to purchasers thereof located in States of the United States other than the State of Illinois and also in the District of Columbia. In the course and conduct of its said business the said respondent is and has been at all times herein mentioned in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of perfumes, cold creams, face powders, and other toiletries.

PAR. 2. Respondent in the course and conduct of its said business as described in paragraph 1 hereof caused advertisements to be inserted in newspapers circulated to the purchasing public in various States of the United States in which it was represented or implied that its said products were of French origin manufactured in and imported from France, that certain of its perfume and face powder were the product of Maison Andrae, or Maison Andre, represented as a French perfumer; that other of its products were the creation of Mons. Henri, Felix Le Roche, and others, represented as being famous French cosmeticians; and that its said products had been or were being sold at certain prices and that such prices had been reduced for the purpose of introducing said products. Examples of such representations as shown in excerpts from such advertisements used by respondent are the following:

Mons. Henri's Birthday Offer
 For "Les Madames et Mademoiselles Americaines"
 A Very Rare Bargain By Mail Only
 10 Everyday Beauty Needs 99¢
 \$7.75 Total Value
 Your One Chance to Get
 All This for 99¢

* * * * *

Bring this coupon and only 98¢—which merely helps to pay our local advertising campaign, special salesladies, express, etc.—and we will give you Free, without further cost, Two Bottles of imported French perfumes—one in Narcissus odor

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and one in Jasmine. Each regular \$2 full ounce bottles, and also a \$1 box of Youthful Glow—the world's most exquisite face powder * * *

“ Friday—Manufacturers' Introductory Sale

French Perfume
and Face Powder

Maison Andre, French Perfumer,
Introduces His Newest NARCISSUS
Formerly Two to Three Times

This Price Both for 98¢

* * * * *

And now from France, comes the most startling beauty discovery of the century. It was found by the famous Felix Laroche, world-known Parisian Cosmetician * * * It is called Cream of Creams * * * Thayer's Cream of Creams has been introduced to thousands of American women at \$1.50 a jar. Now it is available to you in a sensational three day sale, at \$1.00.

And as an additional offer, to make you acquainted now with the World's greatest aid to quick beauty, we will give you Free, during this sale, a full size box of genuine Jeromé Poudre Antique, regularly priced at \$1.00 * * * Also you will receive a full ounce bottle of Jeromé Parfum Narcissus. On sale regularly at \$2.00. All three during this introductory sale for \$1.00. Simply bring or send the coupon below with \$1.00 * * * Maison Andrae's Geunine French Narcissus Perfume and Face Powder—Buy a Regular \$3.00 Bottle of Perfume and \$2.00 Box Face Powder—Get Pearls Free! All Three for only 98¢ * * * \$4.50 value only 98¢. Cleansing Cream—Regularly 75¢. Face Powder—Regularly \$1.00. Tissue and Astr. Cream—Regularly 75¢. Narcissus Perfume—Regularly \$2.00 * * *

PAR. 3. In truth and in fact the products sold by respondent have not been and are not now of French origin or are they manufactured in and imported from France but all are and have been compounded, prepared and packaged at respondent's plant in Chicago, Ill. There are no French perfumers or cosmeticians by the name of Mons. Henri, Felix La Roche or of the other names used by respondent and there is no French perfume or cosmetic establishment by the name of Maison Andrae or Maison Andre. All of such names used by respondent are fictitious. The usual prices for which respondent's products are sold are the special or introductory prices set by respondent in its advertising for combination sets or “deals” wherein two or more of said products are sold together. Comparatively few sales of any of respondent's products are made for the amounts fixed and represented as the regular retail prices.

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PAR. 4. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's preparations are imported from France, that they are the product of famous French perfumers or cosmeticians; that the persons named by respondent as being the originators of its products or formulas are real persons; and that the prices at which respondent's products are offered for sale are special prices lower than the regular prices at which they are sold, when such are not the facts. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use respondent's products because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of perfumes, cold creams, face powders and other cosmetics.

PAR. 5. There are among the competitors of respondent in the sale of its said products those who in no wise misrepresent the origin, make, kind and prices of their competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices 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 commerce and are in 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 duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto, and brief filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Order

It is ordered, That respondent, Thayer Pharmacal Co., its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of perfumes, cold cream, face powder, or other cosmetics, cease and desist from representing by express statements or by implication that any of the same are imported from France or that the same or any of them were originated by or are the product of a famous perfumer or cosmetician, or that the same are offered for sale at reduced prices, when such are not the facts. Respondent is further ordered to cease and desist from using the names of fictitious persons as having originated or produced its products or any of them.

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

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IN THE MATTER OF

A. B. CASPER COMPANY, INC.

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

Docket 2153. Complaint, Jan. 16, 1934—Order, Feb. 10, 1934

Consent order requiring respondent, its agents, etc., in connection with the offer or sale of potatoes in commerce among the several States and the District of Columbia, to cease and desist from representing by brands on containers, advertising, or otherwise that such potatoes were grown in and came from the Red River Valley in Minnesota or North Dakota, or from any recognized or described potato-growing section of said States, or elsewhere, when such is not the fact.

Mr. Marshall Morgan for the Commission.

COMPLAINT

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, having reason to believe that A. B. Casper Co., Inc., has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business located at Gorham Building, Minneapolis, Minn., and since 1917 has been engaged in the business of buying potatoes from various points in the State of Minnesota and selling and distributing the same to jobbers, wholesalers, brokers, and commission merchants throughout the United States. In addition to its main offices in the Gorham Building, as aforesaid, the company maintains and operates storage warehouses at the following points in Minnesota, also, Alvarado and Waubun in the Red River Valley in the northwestern part of the State; at Milaca, Bock, Braham, Stanchfield, and Zimmerman in the Princeton-Cambridge district lying east of the Mississippi River and to the north and west of Minneapolis; and at Finlayson and Groningen in the Duluth district, northeast of Minneapolis, on or near Lake Superior. Said respondent causes said potatoes when sold by it to be transported from its principal place of

business or branch office shipping points in the State of Minnesota into and through the various States of the United States to the purchasers thereof.

In the course and conduct of its aforesaid business the respondent is and for several years has been in direct and substantial competition with various individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of potatoes similar to those sold by respondent.

PAR. 2. The State of Minnesota is noted for its northern grown seed potatoes, the three sections or areas of the State mentioned in paragraph 1 hereof being particularly adapted to such purpose. The aforesaid Red River Valley district, lying in the northwestern part of the State, adjacent to the Red River, includes Clay, Marshall, Norman, Mohnowen, Red Lake, Pennington, Kittson, Becker, and Polk Counties; the Princeton-Cambridge district, east of the Mississippi River, to the north and west of the city of Minneapolis, comprises principally Mille Lacs, Sherburne, and Isanti Counties. The smaller and less important district to the northeast of the Princeton-Cambridge district and nearer to Lake Superior is known as the Duluth district. Potatoes grown in the Duluth district are not involved herein.

U.S. Grade No. 1 for potatoes means good quality of table potatoes, and potatoes grading U.S. No. 1 are frequently used for seed. U.S. Grade No. 1 allows a tolerance of not to exceed 6 percent for scab, bruise or other defects, and running a minimum diameter of $1\frac{7}{8}$ inches. Seed potatoes run up to $2\frac{1}{2}$ inches in diameter and are equally as good for table use. Seed potato buyers favor a particular variety for planting and request branded sacks.

The soil in the so-called Princeton-Cambridge district is sandy, well adapted to potato growing, and is known as the sandland district. In this district there is also a soil known as peat land, which produces in large quantities an early round white variety of Irish potato known to potato growers as the "cobbler." The stock in the peat land around Cambridge has been heavily infested with scab, as has the stock in the other sandland potatoes. Such has been the main cause for the failure of the sandland potatoes to grade U.S. No. 1. Many of the potatoes inspected in the sandland district failed to grade U.S. No. 1, during the seasons of 1931-1932 except in the case of some potatoes grown in the peat soils at Princeton.

The soil in the Red River Valley district is a loamy silt, free from rocks, smooth and level, does not clod, contains clay in places, and is

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rich in lime carbonate. Some of it is black and known as "gumbo." It is an open grass land country, running from river bottom to humid prairie in sections and provides a good seed bed.

The stock from the Red River Valley is usually graded more carefully. Scab is not such a factor in this district. In many sections of the valley scab is rarely seen. Most of the cars inspected in the Red River Valley district graded U.S. No. 1 during the seasons of 1931-1932 and 1932-1933.

Respondent company employs three principal brands of trade names. They are respectively as follows: "Red River", "Northern Grown", and "Lake Superior White", these brands being marked on the bags or sacks in which the potatoes are shipped. The sacks which were intended to indicate potatoes grown in the Red River Valley are branded as follows:

Selected Quality
A B C Brand
GENUINE
RED RIVER POTATOES
100 lbs. net

PAR. 3. About 750 miles to the southeast of the Princeton-Cambridge potato-growing district, and between 1,050 and 1,100 miles to the southeast of the Red River Valley district lies the region about Paducah, Ky., in the great alluvial valleys of the Ohio and the Tennessee Rivers. The soil here, by reason of its depth and richness, its mellow tillable character, and freedom from clods and rocks, is particularly adapted and devoted to the growth of Irish potatoes. A number of important produce houses and commission merchants and brokers supply the trade in and about Paducah during the seed season and three-fourths of the sales are of Red River Cobblers, the consumers demanding the Red River seed in preference to all others. The so-called seed season begins in Minnesota in January. The period of largest demand for seed potatoes in the Paducah section runs from March to May. Paducah planters have found that Red River Valley seedings produce more potatoes, are more prolific, and the return of the crop is greater when this variety is used. Both growers and dealers alike in the Paducah territory prefer Red River seed cobbles.

Some 200 cars of seed potatoes are sold in the seed season in the Paducah market. Paducah is willing to pay a higher price for genuine Red River stock.

PAR. 4. The rate on potatoes moving from points in the Red River Valley district of Minnesota, to Paducah, Ky., ranges from 54 to

55½ cents per 100 pounds in carload lots. The rate from the Minneapolis district, which includes the Princeton-Cambridge sandland area, is 35½ cents per 100 pounds in carload lots, a difference of from 18½ cents to 20 cents per hundredweight in favor of the Princeton-Cambridge district.

Respondent company in making sales to the Paducah trade of alleged Red River potatoes has given quotations from 5 to 10 cents above sandland prices, and from 5 to 10 cents lower than Red River Valley quotations.

In January, 1933, respondent advised the Pennington Brokerage Co. of Paducah that respondent had "several cars of Red River in storage at our nearby stations", thus representing that Red River stock of potatoes had been moved across the State of Minnesota and was held in storage by respondent near Minneapolis, when such was not a fact. The Pennington Brokerage Co. requested quotations on Selected U.S. No. 1 Red River Cobblers and on Triumphs, "preferably Red River stock", and finally ordered a mixed car of U.S. Selected Triumphs and of U.S. No. 1 Minnesota Red River Cobblers, "all branded and tagged." In ordering these potatoes the Pennington Brokerage Co. warned respondent that the State of Kentucky had recently passed a stiff seed law applying to seed potatoes and that all varieties must be tagged and be true to type represented. Respondent confirmed this order for a mixed car of "Red River Cobblers" and "Selected Triumphs", advising that the potatoes would be packed in "new branded Red River bags", thus further indicating that Red River Valley seed potatoes would be shipped.

The car of potatoes which the Pennington Brokerage Co. received from respondent company did not contain Red River Valley potatoes and was not routed from any point in the Red River Valley, but came, on the contrary, from Milaca, Minn., in the sandland district near Minneapolis.

During the following ten weeks the Pennington Brokerage Co. sold four or five cars of these potatoes to various jobbers in Paducah, innocently representing them as Red River Cobblers. After these shipments had been distributed it was ascertained that the Cobblers which had been purchased from respondent were not genuine Red River Cobblers. The manager of the brokerage company thereupon called upon the various jobbers and firms at Paducah and advised each of them that the potatoes which had been sold them in the sacks of A. B. Casper & Co. were not from the Red River district.

PAR. 5. Respondent by such misbranding and the selling of misbranded potatoes in interstate commerce, has thereby falsely represented to the respective purchaser a certain variety of his potatoes to

be a product known to the trade and general public as Red River Cobblers, when in truth and in fact the Cobblers sold by the respondent, and branded as Genuine Red River potatoes, were sandland stock, coming from the sandland district of Minnesota, some 300 miles to the southeast of the Red River Valley.

By putting this product, bearing a false brand, into the channels of trade, and thus passing off one variety of potato for another of different origin, respondent has placed the trade in a position where they may misrepresent to the public, even though unintentionally, the quality and variety and source of potatoes sold by them. Such acts and practices on the part of respondent, as set forth in paragraph 4 herein, are false and misleading and have had the capacity to deceive, and did and do deceive wholesalers, jobbers, brokers, and retailers alike into buying and selling that which they had not intended to buy and sell, and the ultimate purchaser into buying a product he did not intend to buy. The aforesaid practices are to the detriment and injury of growers, producers, and sellers of potatoes in the Red River Valley district, the Paducah, Ky., district, and other potato-growing sections as well, and have had the capacity and tendency to divert to respondent the trade of competitors located not only in the Red River Valley district but elsewhere, and who are engaged in selling, in interstate commerce, potatoes which are truthfully branded. The aforesaid practices of respondent further are detrimental to and tend to demoralize the entire trade and business of growing and selling potatoes.

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

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, A. B. Casper Co., Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. With the complaint was served upon respondents a copy of the Commission's Rules of Practice. Said Rules of Practice with respect to answers provide, among other things, as follows:

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(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceedings, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that the 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 respondents:

(a) In cases arising under Section 5 of the Act of Congress approved September 26, 1914, * * * an order to cease and desist from the violation of law charged in the complaint.

Whereupon, On January 26, 1934, the respondent company having advised the Commission that it desires to waive hearing on the charges set forth in the complaint and consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from violations of the law alleged in the complaint, the Commission being fully advised in the premises,

It is now ordered, That the respondent, A. B. Casper Co., Inc., a corporation, its agents, representatives, and employees, in connection with the offering for sale or selling in commerce among the several States of the United States and in the District of Columbia of potatoes, do cease and desist:

From representing by brands or otherwise on bags or other containers for shipping potatoes, or in advertising, or in any other way, expressly or by implication, that potatoes were grown or produced in, or came from, the Red River Valley, unless such potatoes actually were grown and produced in and were shipped originally from that potato-growing section or district of the State of Minnesota or the State of North Dakota known and designated as the Red River Valley; and from representing by brands or otherwise on bags or other containers for shipping potatoes, or in advertising or in any other way, expressly or by implication, that potatoes were grown or produced in or came from any recognized or stated or described potato-growing section or district of the State of Minnesota or elsewhere, unless such potatoes actually were grown and produced in, and were shipped originally from, such potato-growing section or district.

It is further ordered, That the respondent within 60 days from and after the date of the 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 has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

STANDARD HISTORICAL SOCIETY, INC., H. F. MCGEE,
INDIVIDUALLY AND AS PRESIDENT THEREOF, R. R.
HARDIN, INDIVIDUALLY AND AS VICE PRESIDENT
THEREOF, AND I. SCHULMAN, INDIVIDUALLY AND AS
SECRETARY-TREASURER THEREOF

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

Docket 1886. Complaint, Dec. 15, 1930—Order, Feb. 20, 1934

Consent order requiring respondent corporation, and respondent individuals, in their individual capacity and as officers of said corporation, and their agents, etc., in connection with offer for sale of any books, set of books or publications, in commerce among the several States or in the District of Columbia, to cease and desist from—

- (1) Advertising or representing falsely in any manner that—
 - (a) Any books offered and sold by them have been reserved, to be or will be given free of cost to a purchaser or prospective purchaser or any selected person or persons, as a means of advertising, or for any other purpose;
 - (b) Purchasers of the history are only paying for the loose-leaf extension service, intended to keep the set up to date;
 - (c) Such service is sold separately to others at a price of \$10 per year or at any other price;
 - (d) The history is regularly sold or will be sold later, at a price of \$120, or at any other price greatly in excess of that at which it is being sold or offered and all purchasers will be required to pay said price;
 - (e) The loose-leaf service can be paid for at the rate of \$6.95 a year or any other annual sum;
 - (f) The contributions made or work done, were by any authors, contributors to, or revisers of, any history, other book or set of books, or that any authors, historians or educators were consulted or quoted from in any history or other set of books sold by them;
 - (g) They maintain an editorial staff which digests and records the happenings of the world for said loose-leaf service; and further to cease and desist from—
- (2) Using contract forms, order blanks, or any advertising literature which have printed thereon prices for said history and service in excess of the prices at which they are intended to be, and are customarily sold;
- (3) Using a corporate name which includes the word "society" therein, unless qualified by words clearly indicating that the corporation is not a cooperative society, but one organized for profit; and
- (4) Listing or describing owners of books sold by them as "cooperative members" or nationally known members, and representing respondent as a cooperative society.

Mr. G. Ed. Rowland for the Commission.

Mr. Edward A. McDermott, 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 the corporation and individuals mentioned in the caption hereof, and more particularly hereinafter described and 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, issues this complaint, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Standard Historical Society, Inc., is a corporation organized under the laws of the State of Ohio on or about March, 1928, having its office and principal place of business at 518-524 Walnut Street, in the city of Cincinnati, State of Ohio.

Respondents, H. F. McGee, R. R. Hardin, and I. Schulman, were the incorporators of respondent, Standard Historical Society, Inc., and are and have been respectively the president, vice president, and secretary-treasurer thereof since its organization.

PAR. 2. The respondents are and have been, since March, 1928, engaged in the sale and distribution in interstate commerce of a certain set of books called "Standard History of the World", in 10 volumes, by the subscription method of sale, to persons located at points in the various States of the United States. Upon making such sales, respondents cause and have caused the said books, or publication, to be transported from the city of Cincinnati, State of Ohio, through and into other States of the United States and the District of Columbia, to the purchasers thereof at their respective points of location.

In the course and conduct of their said business respondents are in direct and active competition with other persons, firms, and corporations similarly engaged in the sale and transportation of subscription books and publications in interstate commerce.

PAR. 3. In or about the year 1906, and for a number of years thereafter, there was published and sold throughout the United States a publication called "Standard History of the World", under copyright registered in the Library of Congress. Respondent H. F. McGee, in the year 1927, purchased the plates used in printing the various editions of the work published prior to 1927 and began the sale and distribution of said publication. From on or about November 1, 1927, to March, 1928, respondents H. F. McGee and I. Schulman published, sold, and distributed the said "Standard History of the World" as a partnership, doing business under the trade name and style of Standard Historical Society. Some time in March, 1928,

respondent Standard Historical Society, Inc., was incorporated by respondents H. F. McGee, R. R. Hardin, and I. Schulman, said respondents becoming officers therein, and since that time said set of books, or publication, has been published, sold, and distributed in interstate commerce by said respondent corporation and said individual respondents.

PAR. 4. Respondents sell said Standard History of the World by agents, representatives, and salesmen, who travel from place to place throughout the United States, calling upon members of the public and soliciting the purchase of the publication. Said agents, representatives, and salesmen are paid a commission by respondents for each sale they make. Their method of sale is to require the purchaser to sign a contract form for said Standard History of the World, and certain semiannual supplements, making a down payment to the agent, with the balance to be paid in monthly installments until the complete amount has been paid. The contract and down payment are sent by the agents, representatives, and salesmen to the main office of respondents in Cincinnati, and the set of books is thereupon shipped by respondents to the purchasers thereof at their respective points of location. A duplicate of the said contract is left with the purchaser by the agent, representative, or salesman.

PAR. 5. In the course and conduct of their said business, respondents through their aforesaid agents, representatives, and salesmen, have employed, in the sale of their said set of books, or publication, sales talks to be made by said agents, representatives, and salesmen to prospective purchasers, which said sales talks contain many false, deceptive, and misleading statements and representations regarding said Standard History of the World, and the way and manner in which it is sold. Said respondents H. F. McGee and I. Schulman, and certain other employees of respondent Standard Historical Society, Inc., supply written copies of said sales talks to agents, representatives, and salesmen employed by said respondents, or personally teach them the said sales talks and said agents, representatives, and salesmen are expected to, and do, learn the said sales talks and repeat them to prospective purchasers when soliciting sales of the said set of books, or publication.

PAR. 6. Respondents, through their agents, representatives, and salesmen, represent that they will present a set of the said "Standard History of the World" free of charge to the prospective customer, upon condition that said prospective customer will furnish respondents with a letter giving his opinion of the said set of books. As a condition precedent to availing themselves of the free offer such prospective customers are required to subscribe to a so-called loose-leaf extension service, which service respondents by their agents,

representatives, and salesmen, represent that they will furnish twice each year for a period of 10 years to the owners of the said "Standard History of the World", and that said extension service contains all the current historical events of the world, thereby keeping the history sold by respondents up-to-date. Respondents, through their agents, representatives, and salesmen, represent that the purchaser pays only for the extension service at the rate of \$5.95, \$6.95, or \$7.90 per year for 10 years, or a total of \$59.50, \$69.50, or \$79, which sums pay for the said service for a period of 10 years.

The aforesaid representations made by respondents, through their agents, representatives, and salesmen, are false and misleading in that respondents do not present their said set of books, or publication, to the purchaser free, because the price of \$59.50, \$69.50, or \$79 for the loose-leaf extension service is greatly in excess of the price at which respondents can furnish such service to bona fide purchasers and is sufficient to compensate said respondents for the set of books, or publication, so delivered to the purchasers thereof, together with the accompanying extension service, and respondents do not allow purchasers to pay for said extension service at the rate of \$5.95, \$6.95, or \$7.90 a year for 10 years, but require that the total sum of \$59.50, \$69.50, or \$79 be paid within one year after the date of the transaction in monthly installments. In subscribing to the extension service in the manner set forth above the purchaser is in truth and in fact purchasing the said set of books, or publication, and the extension service for the sum of \$59.50, \$69.50, or \$79, as the case may be, under the mistaken belief that he is receiving the said set of books, or publication, free of charge, and is paying only for the extension service.

PAR. 7. Respondents, through their agents, representatives, or salesmen, represent to prospective purchasers in various communities that in said communities a limited number of persons will be sold the set of books, or publication, at a special, reduced price, and respondents, through their agents, representatives, and salesmen, represent that the regular price of said set of books, or publication, is \$120, and the regular price of said extension service is \$10 per year for 10 years, a total of \$220, but that such limited number of persons can obtain the same at the specially reduced price of \$59.50, \$69.50, or \$79, and said respondents further represent that the said prices of \$59.50, \$69.50, or \$79 are not available to the general public, but are special prices made for advertising purposes in advance of a sales campaign to be had a few months in the future, when purchasers will have to pay the regular price of \$220 for the set of books, or publication. The fact is that said statements and repre-

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sentations are false, deceptive and misleading because respondents have never sold the above-described set of books, or publication, and the extension service, for the sum of \$220, nor has it ever sold or offered for sale such set of books and extension service for a greater sum than \$59.50, \$69.50, or \$79, which is the usual and customary price at which respondents have sold and now sell the set of books and extension service to all persons who can be induced to purchase same, and there is no sales campaign a few months in the future, as the sales made by the agents, representatives, and salesmen of respondents at the prices of \$59.50, \$69.50, and \$79, are its customary methods of selling and the regular and usual prices charged by said respondents for said set of books, or publication.

PAR. 8. Respondents, in the conduct of their business, and for the purpose of inducing prospective purchasers to buy their Standard History of the World, have in advertising matter, and otherwise, represented that eleven prominent educators, specializing in the teaching of history, were and are special contributors to said set of books, or publication, and wrote articles contained in, or revised, said set of books, and print the names of said prominent educators in said set of books, and advertising literature pertaining thereto, under the heading "Special Contributors." Respondents also print in their advertising literature a list of names of prominent authors, historians and educators, both of the past and present, as being a partial list of authorities consulted and quoted in said Standard History of the World, and further represent that they maintain an editorial staff which digests and records the historical happenings of the world for the aforesaid loose-leaf extension service. The aforesaid representations are false, deceptive, and misleading because in truth and in fact said prominent educators are not special contributors and did not contribute any articles, or revise, said set of books, but only wrote introductions to each of the separate volumes of said set of books; there are no quoted articles from the list of authors, historians, and educators contained in the set of books, and no references to the writings of any of said persons, or signed articles by them, contained therein; respondents do not maintain any editorial staff to prepare the extension service.

PAR. 9. Respondents, in the course and conduct of their business, use the name "Standard Historical Society", as the corporate name under which they do business and said name appears on all letterheads, billheads, contract forms, advertising, and other literature used by said respondents. On certain advertising material used by respondents, there appears the phrases "cooperative members" and "nationally known members", in prominent type, printed in red. The use by respondents of the corporate name Standard

Historical Society, Inc., and the aforesaid phrases is for the purpose of leading the public and prospective purchasers to believe that respondent Standard Historical Society, Inc., is in fact a society of persons interested in the subject of history engaged in publishing the "Standard History of the World", and that by buying respondents' said set of books, or publications, a purchaser will become a member of said society. In truth and in fact, respondent Standard Historical Society is not a society, in the ordinary meaning of that term, but is a corporation, and respondents H. F. McGee, R. R. Hardin, and I. Schulman adopted that name for the purpose of misleading and deceiving the public and prospective purchasers into buying the publications of respondent in the belief that by so doing they would become members of a historical society.

PAR. 10. Respondents, their agents, representatives, and salesmen, by means of the false, deceptive, and misleading representations and statements set forth above, have sold and are selling its said set of books, or publication, "Standard History of the World", including the extension service, to members of the public throughout the United States, who are thereby induced to purchase said publication because of aforesaid false, deceptive, and misleading statements and representations.

PAR. 11. The above alleged acts, things 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."

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 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 entered their appearances and filed answers to said complaint. On January 31, 1934, respondents filed an amended answer herein, wherein they make certain admissions of fact and state that they do not desire to contest the proceeding, and consent that the Commission may make, enter, and serve upon them an order to cease and desist from the violations of law alleged in the complaint, in accordance with Section 2, Rule III, of the Rules of

Practice of the Commission, and the Commission having accepted said consent and the amended answer in lieu of the former answer theretofore filed, and being fully advised in the premises,

It is now ordered, That the respondents Standard Historical Society, Inc., H. F. McGee, individually, and as president of Standard Historical Society, Inc., R. R. Hardin, individually, and as vice president of Standard Historical Society, Inc., and I. Schulman, individually, and as secretary-treasurer of Standard Historical Society, Inc., and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications, in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them have been reserved to be, or will be, given free of cost to said purchaser or prospective purchaser, or to any selected person or persons, as a means of advertising, or for any other purpose, when such is not the fact.

(2) Advertising or representing in any manner that purchasers or prospective purchasers of the history sold by them are only buying or paying for loose-leaf extension service intended to keep the set of books up-to-date, when such is not the fact.

(3) Advertising or representing in any manner that the semi-annual loose-leaf extension service is sold separately to others than purchasers of the history sold by them at a price of \$10 per year, or at any other price, when such is not the fact.

(4) Advertising or representing in any manner to purchasers and prospective purchasers that the history sold by them is regularly sold at a price of \$120, or will be put on sale at a later date at such price or any other price greatly in excess of the price at which said history is then being sold or offered for sale, and that all purchasers of it will be required to pay said price, when such is not the fact.

(5) Using contract forms, order blanks, or any advertising literature, which have printed thereon prices for the history and loose-leaf extension service which are in excess of the prices at which said history and service are intended to be, and are customarily sold.

(6) Representing in any manner that the semiannual loose-leaf extension service can be paid for at a rate of \$6.95 a year, or any other annual sum, when such is not the fact.

(7) Misrepresenting in any manner in any advertising or other literature the contribution made, or the work done, by any authors,

contributors to, or revisers of, any history, or other book, or set of books.

(8) Advertising or representing in any manner that any authors, historians, or educators were consulted and quoted from in any history, or other set of books, sold by them, when such is not the fact.

(9) Advertising or representing in any manner that they maintain an editorial staff which digests and records the historical happenings of the world for the loose-leaf extension service, when such is not the fact.

(10) Using a corporate name which includes the word "society" therein, unless qualified by words clearly indicating that the corporation is not a cooperative society, but is a corporation organized for profit, or words to a similar effect.

(11) Listing or describing owners of books sold by them as "cooperative members" or "nationally known members"; and from representing that the respondents is a cooperative society.

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
LINDSAY LIGHT COMPANY

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

Docket 2142. Complaint, Dec. 22, 1933—Order, Mar. 5, 1934.

- Consent order requiring respondent, its officers, agents, employees, and representatives to cease and desist from—
- Carrying out and enforcing a certain agreement entered into by it with certain foreign companies in which said companies agreed with it not to export thorium or any derivative product of monazite sand, except ferrocerium, to the United States or Canada, in consideration of its agreement to sell thorium nitrate, thorium and other monazite sand derivatives only to gas mantle manufacturers in said two countries, and only upon their agreements not to resell said products, and in which certain agreement it undertook not to sell any such derivative products except to consumers thereof in said two countries, and upon the required condition that such consumer purchasers agree not to export the same, and in which certain agreement a German concern undertook to bind and induce monazite sand producers in India to deliver same in Austria and Germany only to such German concern, in France and England only to French and English concerns involved as contracting parties, and in United States only to it;
- Entering into any other agreement of like tenor or substance, or into any agreement with any producer of thorium or of other products derived from said sand, by which agreements said thorium or other products shall not be imported into or exported from the United States;
- Agreeing with any manufacturer of thorium to sell said substance only in the United States and Canada, or in any other restricted territory, to gas mantle manufacturers and/or with a condition that such manufacturers shall not resell such substance;
- Agreeing with any producer, seller, or manufacturer of thorium or other products derived as aforesaid, not to sell such products except to consumers thereof in the United States and Canada, or in any other restricted territory, and/or with the provision that said products must not be exported by such purchasers;
- Entering into any agreement with any manufacturer of products derived from said sand, by which such manufacturers endeavor to bind producers of such sand to deliver same only to specified parties;
- Entering into any agreement for the purchase of such sand by which the seller thereof agrees not to offer or sell the same to any individual, in the United States, other than it, and/or by which the seller agrees to prevent any of said customers from shipping the same into United States;
- Enforcing certain provisions of an agreement entered into with a certain foreign concern by which said concern agreed not to offer or sell monazite sand to any individual or company other than it, said respondent, and to lend its best efforts to prevent any of said concern's foreign customers from shipping such sand into the United States;

Requiring its purchasers of thorium nitrate to agree, as a condition of their purchases, not to resell said substance and/or other monazite derivatives purchased from it, and not to export from the United States or Canada said substance or other derivatives;

Refusing to sell thorium nitrate, thorium, and other derivatives, in connection with the sale or offer in interstate or foreign commerce of such substances or products, because purchasers thereof have resold such products and/or have exported the same from the United States, and/or from Canada; and

Entering into any other combination, agreement, conspiracy, or understanding for the purpose or with the effect of restricting or restraining the importation into the United States of monazite sand, thorium, thorium nitrate and other monazite sand derivatives, or of restraining or restricting the exporting from the United States to any foreign country or to any of the territories or insular possessions of the United States, monazite sand, thorium, thorium nitrate, and other monazite sand derivatives.

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 Lindsay Light Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate and foreign commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lindsay Light Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State. It is now and since its organization has been engaged in the importation into the United States of monazite sand originating in India, and in the manufacture from such monazite sand of various chemicals, including thorium nitrate; and in the sale between and among the various States of the United States and in the Dominion of Canada of thorium nitrate and other derivatives of monazite sand; and in the manufacture and sale throughout the various States of the United States and in the Dominion of Canada of gas mantles, of which thorium nitrate is an essential ingredient. Prior to the agreements hereinafter mentioned, it had also been engaged in the sale of thorium nitrates and other derivatives of monazite sand, and gas mantles to purchasers thereof in various European countries, particularly England, France, Germany, and Austria.

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In the course and conduct of its said business, respondent, prior to the agreements hereinafter mentioned had caused such thorium nitrate and other derivatives of monazite sand, and gas mantles, when purchased, to be transported from its principal place of business, in Chicago, Ill., to the purchasers thereof located in such foreign countries. In the course and conduct of its business respondent still causes its products sold in the United States and in the Dominion of Canada, namely, thorium nitrate and other derivatives of monazite sand, and gas mantles, to be transported in interstate and foreign commerce from its place of business in Chicago, Ill., into and through other States of the United States and to the Dominion of Canada, to the purchasers to whom such products are and have been sold. Among such purchasers of thorium nitrate in the United States and in the Dominion of Canada are competitors of the respondent in the sale of gas mantles between and among the various States of the United States, the territories thereof, the District of Columbia, and in the Dominion of Canada. Such purchasers, because of the agreements described in paragraph 3 hereof, have no source of supply for thorium nitrate except from the respondent.

PAR. 2. Respondent is now and ever since its organization has been the largest manufacturer of thorium nitrate and other monazite sand derivatives, and of gas mantles, in the United States and in the Dominion of Canada. For the purpose and with the effect of creating in respondent a monopoly in the sale of monazite sand, thorium nitrate, other monazite sand derivatives, and gas mantles, and of stifling and suppressing competition in the sale of monazite sand, thorium nitrate, other monazite sand derivatives, and gas mantles, and for the purpose and with the effect of restraining the export trade of the United States in monazite sand, thorium, thorium nitrate, other monazite sand derivatives, and gas mantles in interstate commerce and in foreign commerce, respondent has entered into various agreements, combinations, and conspiracies, hereinafter more particularly set forth in paragraph 3 hereof.

PAR. 3. In 1930 respondent entered into, and has since carried out, an agreement with (1) Deutsche Gasglulicht auer Gesellschaft, M.B. H., Berlin, which then controlled and which still controls the manufacture and sale in Austria and Germany of thorium, thorium nitrate, and other products derived from monazite sand, (2) Ste. Miniere & Industrielle Franco-Bresilienne, Paris, and Ste. de Produits Chimiques des Terres Rares, Paris, which together then controlled and still control the manufacture and sale in France of thorium, thorium nitrate, and other derivatives of monazite sand, (3) Thorium, Ltd., London, which, together with an affiliate, Traven-

core Minerals Co., Ltd., then controlled and still controls the manufacture and sale throughout the British Empire, excepting the Dominion of Canada (where the control of the manufacture and sale of such products then was held and still is held by the respondent), of thorium nitrate, thorium, and other derivatives of monazite sand, in which agreement the aforesaid companies agreed with the respondent not to export thorium or any product derived from monazite sand, except ferrocerium, to the United States or to Canada, in consideration of which respondent agreed to sell thorium, thorium nitrate, and other monazite derivatives only to gas mantle manufacturers in the United States and Canada and then only upon the agreements of such purchasers not to resell such thorium, thorium nitrate, and other monazite sand derivatives.

Respondent further agreed with said companies that it would not sell any products derived from the workings of monazite sand excepting to consumers of such products in the United States and in Canada and that it would require its purchasers of products derived from monazite sand to agree that such goods would not be exported. As a part of said agreements, Deutsche Gasglulicht auer Gesellschaft, M.B.H., undertook to bind and induce, and has since bound and induced, monazite sand producers in India, which country is the principal source of supply of monazite sand, to deliver monazite sand in Austria and Germany only to Deutsche Gasglulicht auer Gesellschaft, M.B.H.; in France only to Ste. Miniere & Industrielle Frando-Bresilienne and Ste. de Produits Chimiques des Terres Rares; in England only to Thorium, Ltd.; and in the United States of America only to the respondent, Lindsay Light Co.

By the terms of said agreement it is to continue in force and effect from April 9, 1930, to March 31, 1940. In August, 1930, respondent entered into, and has since carried out, an agreement with Travencore Minerals Company, Ltd., hereinabove mentioned, of London, England, which, with the said Thorium, Ltd., controlled and still controls the manufacture and sale of thorium nitrate throughout the British Empire, excepting Canada (where the control of the manufacture and sale of such products then was held and still is held by the respondent) by which agreement said Travencore Minerals Co., Ltd., agreed to furnish respondent with certain quantities of monazite sand and further not to offer for sale or sell monazite sand to anyone in the United States of America other than respondent, and further to use its best efforts to prevent its foreign customers from shipping monazite sand to the United States of America. By the terms of said agreement it is to continue in full force and effect from September 1, 1931, to August 31, 1934.

PAR. 4. Since their execution, the agreements mentioned in paragraph 3 hereof have been carried out by the parties signatories thereto; and Lindsay Light Co., respondent herein, in carrying out its part of such agreements, has sold thorium nitrate, thorium, and other derivatives of monazite sand, only in the United States of America and in the Dominion of Canada, requiring its purchasers, as a condition to their purchases, to agree not to resell thorium nitrate, thorium, and other derivatives of monazite sand so purchased from the respondent, and requiring such purchasers also to agree not to export from the United States or Canada thorium nitrate, thorium, and other monazite sand derivatives purchased from the respondent; and respondent, for the purpose of carrying out the said contracts, has refused further to sell certain of its purchasers because such purchasers had, in violation of their agreements with respondent, resold such thorium nitrate, thorium, and other monazite sand derivatives or had shipped in export trade from the United States and Canada thorium nitrate, thorium, and other monazite sand derivatives purchased from the respondent; and the other parties to the contracts mentioned in paragraph 3 hereof have carried out such agreements, and, as a consequence, have not sold thorium nitrate, other monazite sand derivatives or monazite sand to anyone in the United States of America or in Canada other than the respondent, Lindsay Light Co.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, have a dangerous tendency to unduly hinder competition and to create a monopoly in the United States in the sale in interstate commerce of monazite sand, thorium, thorium nitrate, and other monazite sand derivatives and in the sale in interstate commerce of gas mantles, have restrained the export trade of the United States in monazite sand, thorium nitrate, thorium, and other derivatives of monazite sand and have restrained commerce between the various States of the United States and foreign countries in monazite sand, thorium, thorium nitrate, and other derivatives of monazite sand, and constitute unfair methods of competition in interstate and foreign 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", 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 proceedings; 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, Lindsay Light Co., a corporation, its officers, agents, employees, and representatives forthwith cease and desist from carrying out and enforcing its certain agreement entered into by it on April 11, 1930, with (1) Deutsche Gasglulicht auer Ges. M.B.H., Berlin; (2) Thorium, Ltd., London; (3) Ste. de Produits Chimiques des Terres Rares, Paris; and (4) Ste. Miniere & Industrielle Franco Bresilienne, Paris, in which agreement the aforesaid companies agreed with said Lindsay Light Co., not to export thorium or any product derived from monazite sand, except ferrocium, to the United States or to Canada, in consideration of which said Lindsay Light Co. agreed to sell thorium nitrate, thorium and other monazite sand derivatives only to gas mantle manufacturers in the United States and Canada and then only upon agreements of such purchasers not to resell such thorium, thorium nitrate and other monazite sand derivatives; and in which agreement said Lindsay Light Co. agreed with said companies that it would not sell any products derived from the workings of monazite sand excepting to consumers of such products in the United States and Canada, and that it, said Lindsay Light Co., would require its purchasers of products derived from monazite sand to agree that such goods would not be exported; and, in which said agreement the said Deutsche Gasglulicht auer Gesellschaft M.B.H. undertook to bind and induce monazite sand producers in India to deliver monazite sand in Austria and Germany only to Deutsche Gasglulicht auer Gesellschaft M.B.H.; in France only to Ste. Miniere & Industrielle Franco Bresilienne and Ste. de Produits Chimiques des Terres Rares; in England only to Thorium, Ltd.; and in the United States of America only to the said Lindsay Light Co.;

And it is hereby further ordered, That the said respondent, Lindsay Light Co., its officers, agents, employees, and representatives forthwith cease and desist from (1) entering into any other agreement of like tenor or substance, (2) entering into any agreement with any producer of thorium or of any other products derived from monazite sand by which agreements thorium or any other

products derived from monazite sand shall not be imported from any foreign country into the United States of America or exported from the United States of America to any foreign country, (3) agreeing with any manufacturer of thorium to sell thorium only in the United States of America and Canada or in any other restricted territory to gas mantle manufacturers and/or with a condition that such gas mantle manufacturers shall not resell such thorium, (4) agreeing with any producer, seller or manufacturer of thorium or other products derived from monazite sand not to sell products derived from the working of monazite sand except to consumers of said product in the United States and Canada or in any other restricted territory and/or with the provision that such products must not be exported by such purchasers, (5) entering into any agreement with any manufacturer of products derived from monazite sand by which agreement said manufacturers endeavor to bind monazite sand producers to deliver such monazite sand only to specified, named or designated parties;

And it is hereby further ordered, That the respondent, Lindsay Light Co., a corporation, its officers, agents, employees and representatives forthwith cease and desist from (1) entering into any agreement for the purchase of monazite sand by which agreement the seller of such monazite sand agrees not to offer or sell monazite sand to any individual, person, company or corporation in the United States other than the said Lindsay Light Co. and/or by which the seller agrees to prevent any of its customers from shipping monazite sand into the United States of America, and (2) enforcing those certain provisions of an agreement entered into on August 17, 1931, with Travencore Minerals Co., Ltd., for the purchase of monazite sand, by which provisions said Travencore Minerals Co., Ltd., agreed not to offer for sale or sell Indian monazite sand to any individual or company in the United States of America other than said Lindsay Light Co., and further agreed to lend its best efforts to prevent any of its foreign customers from shipping monazite sand into the United States of America;

And it is hereby further ordered, That the respondent, Lindsay Light Co., its officers, agents, employees, and representatives in the sale, or offering for sale in interstate and foreign commerce of thorium nitrate forthwith cease and desist from (1) requiring its purchasers of thorium nitrate to agree, as a condition of their purchases, not to resell thorium nitrate, and/or other derivatives of monazite sand so purchased from the respondent, (2) requiring such purchasers of thorium nitrate, thorium and other derivatives of monazite sand not to export from the United States or from Canada,

thorium nitrate, thorium, and other monazite sand derivatives purchased from the said respondent;

And it is hereby further ordered, That the respondent, Lindsay Light Co., its officers, agents, employees and representatives in the sale or offering for sale in interstate and foreign commerce of thorium nitrate, thorium and other monazite sand derivatives, forthwith cease and desist from refusing to sell thorium nitrate, thorium and other monazite sand derivatives, because its purchasers thereof have resold such products and/or have exported the same from the United States and/or from Canada;

And it is hereby further ordered, That the said respondent, Lindsay Light Co., its officers, directors and employees forthwith cease and desist from entering into any other combination, agreement, conspiracy or understanding for the purpose of, or with the effect of restricting or restraining the importation into the United States of America of monazite sand, thorium, thorium nitrate and other monazite sand derivatives, or for the purpose or with the effect of restraining or restricting the exporting from the United States to any foreign country or to any of the territories or insular possessions of the United States, monazite sand, thorium, thorium nitrate, and other montzite sand derivatives;

And it is hereby further ordered, That the said respondent Lindsay Light Co., shall, within 60 days from the day of the date of the service upon it of this order file with this Commission a report in writing setting forth the manner in which it has complied with this order.

IN THE MATTER OF

EMMETT MCGOWAN AND ROY HALL, COPARTNERS,
DOING BUSINESS UNDER THE FIRM NAME OF
MCGOWAN & HALLCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 214. Complaint, Dec. 29, 1933—Order, Mar. 5, 1934*

Consent order requiring respondent Hall, his agents, etc., in connection with the sale, advertisement, and offer for sale in interstate commerce of spark plugs, to cease and desist sale of such reconditioned articles, under such brand or trade names of the manufacturer as "Champion" and "AC", without stating and representing to the purchasers that said articles are used or defective spark plugs, repaired or reconditioned for further service; and without plainly marking on the boxes, cartons or other containers in which the same are sold or offered for sale that said spark plugs have been repaired or reconditioned.

Mr. Edward E. Reardon for the Commission.

COMPLAINT

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, having reason to believe that Emmett McGowan and Roy Hall, copartners, doing business under the firm name McGowan & Hall, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect, as follows:

PARAGRAPH 1. The respondents Emmett McGowan and Roy Hall are residents of Minneapolis, Minn. Since on or about August 1, 1932, they have been and are now engaged in business as copartners under the firm name McGowan & Hall with a place of business at number 1102 East Twenty-fourth Street, Minneapolis.

PAR. 2. During all the times above mentioned respondents have been engaged in the course of their business as copartners, among other things, in the sale of spark plugs, used for ignition of gases in gasoline or gas engines, and the respondents have sold them and still sell them to purchasers located throughout the United States, dealers

who purchase for resale and members of the public, users and consumers of spark plugs; and the respondents have caused the spark plugs when so sold by them to be transported from their place of business in Minnesota, or State of origin of the shipment, to, into and through other States to the said purchasers.

PAR. 3. During all the times above mentioned other individuals, firms, and corporations, manufacturers and sellers of spark plugs located in various States of the United States, have been and are now engaged in the business of manufacturing and selling spark plugs to purchasers, dealers who purchase for resale and members of the public, users and consumers thereof, residing in States other than the State of the manufacturers and sellers or the State of origin of the shipment; and the said manufacturers and sellers, respectively, have caused the spark plugs, when so sold by them during said times, to be transported from the State of the seller or the State of origin of the shipment to, into and through other States to the purchasers.

PAR. 4. The respondents, during all the times above mentioned and referred to, have been and still are in competition in interstate commerce in the sale of spark plugs with the other individuals, firms, and corporations, the manufacturers and sellers of spark plugs mentioned and referred to in paragraph 3 hereof.

PAR. 5. Among the manufacturers and sellers of spark plugs referred to in paragraph 3 hereof are manufacturers who are and have been making and selling spark plugs, respectively, under the brands or trade names "Champion" and "AC" with which they are and have been branded or marked, and the spark plugs made and sold by the manufacturers of them under these brand names are and have been the best known of such products and most in demand by users or consumers and dealers in spark plugs.

During all the times above mentioned, the spark plugs, made and sold, marked or branded with these brands or trade names are and have been, nearly all of them, sold by the manufacturers and, to a large and substantial amount or extent, resold by dealers in interstate commerce as set forth in paragraph 3 hereof; and the business of the sale of these spark plugs in interstate commerce constitutes and has constituted a very substantial part of the entire business in the sale of spark plugs in the United States during said times.

PAR. 6. The spark plugs sold by the respondents, referred to in paragraph 2 hereof, were and are substantially all of them spark plugs that had been previously sold by the manufacturers and used by members of the public under the brands or trade names "Champion" and "AC" until they had become outworn by use or were defective and in an unserviceable or unfit condition for sale or for further use as spark plugs; and these outworn or unserviceable spark

plugs the respondents made a practice of obtaining, at nominal cost, in considerable quantities from garage keepers, junk dealers, or similar sources of supply, as discarded or scrapped material, and then repaired or reconditioned them for further use and sale as spark plugs; and respondents sold them as set forth in paragraph 2 hereof with the brands or trade names on them, which are mentioned in paragraph 5 hereof, without disclosing to purchasers that the same were used or defective spark plugs, which had been repaired or reconditioned for further service or use as spark plugs; and the sale of such spark plugs constituted the greater part of the business of the respondents in the sale of spark plugs.

PAR. 7. During the times above mentioned and referred to the respondents in connection with the sale of the spark plugs mentioned and referred to in paragraphs 2 and 6 hereof, have displayed at their place of business a sign on which is printed the following:

Guaranteed AC and Champion
Spark Plugs
35¢ each \$28 per hundred

and the respondents and their salesmen during said times have also orally and by means of business cards distributed by them among dealers and the public represented to purchasers and prospective purchasers of spark plugs as follows:

Guaranteed AC and Champion
Spark Plugs
For All Cars and Trucks

PAR. 8. The sale by the respondents of spark plugs under the brand names "Champion" and "AC" which they reconditioned and repaired from old and used spark plugs as set forth and which respondents represented as guaranteed "AC" and "Champion" spark plugs, without disclosing that the same were outworn or otherwise defective spark plugs that respondents had repaired or reconditioned, had the tendency and capacity to mislead and deceive the purchasers, dealers and users, and they have misled and deceived dealers and users of spark plugs into the belief that the spark plugs sold by the respondents were new and in the same condition they were in when made and sold by the manufacturers of them, and in reliance upon such belief into purchasing them from respondents instead of purchasing from the manufacturers or from dealers, competitors of respondents, mentioned and referred to in paragraphs 3 and 5 hereof, new and unused "Champion" and "AC" spark plugs sold by said competitors in interstate commerce.

The sale of repaired or reconditioned spark plugs under the brands or trade names "Champion" and "AC" by the respondents in interstate commerce under and in accordance with the practices of the respondents as set forth above has diverted trade from respondents' competitors and has wrongfully and unduly restrained the interstate commerce and trade of respondents' competitors in their businesses in the sale of spark plugs.

PAR. 9. The above acts and things done and caused to be done by the respondents are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in 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 provision of an Act of Congress approved September 26, 1914 (38 Stat. 717) the Federal Trade Commission issued a complaint against the respondents, Emmett McGowan and Roy Hall, copartners, doing business under the firm name of McGowan & Hall, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. With the complaint there was served upon respondent Roy Hall a copy of the Commission's Rules of Practice. Said Rules of Practice with respect to answers provide, among other things, as follows:

III. ANSWERS

(2) In case respondent desires to waive hearings on the charges set forth in the complaint and not to contest the proceedings, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that the 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 respondents:

(a) In cases arising under section 5 of the act of Congress approved September 26, 1914, * * * an order to cease and desist from the violation of law charged in the complaint.

Whereupon, On January 29, 1934, the respondent Roy Hall filed his answer to said complaint. Subsequently, to wit, on March 2, 1934, the said respondent Roy Hall filed his amended answer in

which he consented that the Commission might make, enter and serve upon him an order to cease and desist from the violations of law alleged in the complaint.

Whereupon, Pursuant to its Rules of Practice, the Commission finds that said amended answer is an admission by the said respondent Roy Hall of all the allegations of the complaint and a waiver of hearing thereon and authorizes the Commission without trial, without evidence and without findings as to the facts or other intervening procedure to make, enter, issue and serve upon said respondent Roy Hall an order to cease and desist from the violations of law alleged in the complaint. The Commission being fully advised in the premises,

It is now ordered, That respondent, Roy Hall, his agents, employees and representatives in connection with the sale and the advertising and offering for sale in interstate commerce of spark plugs, used for ignition of gas in gasoline or gas engines,

Cease and desist from the sale of spark plugs, sold under manufacturers' brands or trade names such as "Champion" and "AC" that have previously been in use and have been discarded from use because outworn, defective and unserviceable and that have been repaired or reconditioned for further service as spark plugs, without stating and representing to the purchasers that the spark plugs are used or defective spark plugs, repaired or reconditioned for further service; and without plainly marking on the boxes, cartons or other containers in which the said spark plugs are sold or offered for sale that the said spark plugs have been repaired or reconditioned.

It is further ordered, That said respondent, Roy Hall, within 30 days after the date of 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.

Syllabus

IN THE MATTER OF

NORTHERN FRUIT AND PRODUCE CO., NATHAN RUBEN,
TED E. WOLFE, LEE W. WOLFE, GROWERS' PRODUCE
EXCHANGE, JACK RUBEN, AND L. G. WILLIAMS

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

Docket 2115. Complaint, Oct. 5, 1933¹—Decision, Mar. 8, 1934

Where two corporations dealing in seed potatoes and three individuals, incorporators, employees or officers of one or both of said corporations as the case might be,

- (a) Labeled the bags thereof with tags which set forth that the contents were fully described in Federal Inspection Certificate No. (giving it) now on file at U.S. Department of Agriculture, Washington, D.C., and thereby, with intent to deceive, falsely represented that said potatoes had been competently and disinterestedly inspected, while growing in the field, by or under the auspices of a Federal agency, by which it had been certified that they were free from "dwarf", "running out", "mosaic", and other deleterious diseases, determinable by such inspection;

The facts being that the particular inspection referred to was not that immediately above described, or an inspection made under supervision of an accredited Federal or State institution or organization, as had come to be understood by the word "certified", through the practice of inspecting and certifying, under official auspices, seed potatoes in seed potato growing states, and the efforts of state and local organizations and educational institutions and state and national agencies in widely disseminating and stressing the value of planting such potatoes certified as "free" from said diseases, but was one, made in response to their request, for condition only, or for condition, size, quality, and grade, as the case might be,

With result that prospective purchasers bought said potatoes as and for those inspected and certified as above set forth, and paid higher prices therefor than they otherwise would have done; and

- (b) Falsely represented to prospective purchasers that they were selling and shipping them seed potatoes designated by Federal Inspection Certification as "U.S. No. 1 grade" and that the potatoes in said shipments were true to variety;

With result that their said representations were passed on to, through and by the various buyers, commission merchants, middlemen, wholesalers, jobbers and chain stores, as aforesaid, to the ultimate purchasers who, believing and relying thereon, purchased and planted seed potatoes productive of inferior crops, they were enabled to sell their said so-called certified seed potatoes at a greater profit than was obtainable by competitors, who do not make such misrepresentations, and were unfairly enabled to undersell competitors, who had had their potatoes field-inspected, at greater cost, by competent, disinterested persons under supervision of accredited national or state associations or institutions, and who, after paying reasonable

¹ Amended and supplemental.

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and usual expense thereof, were unable to compete with them at a profit, and with capacity and tendency so to result and to divert trade from competitors to them:

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. PGad B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, Northern Fruit & Produce Co., and Growers' Produce Exchange, Illinois corporations engaged in the purchase and sale of seed potatoes in car-load lots in various states, and with offices and principal places of business in Chicago, and respondent Ted E. Wolfe, former employee of the former corporation, respondents Nathan Ruben and Lee W. Wolfe, president and secretary, respectively, thereof, and in case of said Wolfe, active manager of both, and respondents Jack Ruben and L. G. Williams, incorporators and officers² of the latter, with misbranding or mislabeling and misrepresenting product as to inspection, quality, and variety, in violation of the provisions of Section 5 of said Act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondents set forth on tags attached to bags of their said product, inspection thereof by the Department of Agriculture through referring to its "Federal Inspection Certificate No." etc., and falsely represented its potatoes as U.S. No. 1 grade and true to variety, notwithstanding fact that particular inspection in question was not that competent, disinterested inspection of the growing plant for injurious diseases, associated by trade and planters through educational work of state and other public organizations and institutions with word "certified"; with intent and effect of misleading and deceiving purchasers and prospective purchasers, bringing about planting of seed productive of inferior crops, and securing the premium paid for seed potatoes in fact thus inspected and certified as free from such diseases, and of prejudicing competitors who had incurred the expense of the more costly field inspection, and were thereby unable to compete at a profit; all to their prejudice and that of the public.³

² Together with said Ted W. Wolfe.

³ The allegations of the complaint are set forth substantially verbatim in the findings, respondents either failing to appear or admitting such allegations, and consenting to entry of order to cease and desist against them.

The practices of respondents, Northern Fruit & Produce Co. and Ted E. Wolfe in tagging seed potatoes misleadingly were the subject of an order to cease and desist on Dec. 6, 1932. See 17 F.T.C. 140. Following such order, said respondents, as alleged, have operated through the other respondents herein.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its amended and supplemental complaint upon the respondents charging them with the use of unfair methods of competition in violation of the provisions of the said act.

The Commission duly caused said complaint to be served upon the respondents, and each of them, stating its charges in that respect and containing notice of a hearing upon a day and at a place therein fixed, to wit, the 10th day of November, 1933, at 2 o'clock in the afternoon, at the office of the Federal Trade Commission in the City of Washington, D.C. Respondents Northern Fruit & Produce Co., a corporation, Nathan Ruben, and Lee W. Wolfe, having failed to appear at the place and time so fixed or to answer or to show cause why an order should not be entered by the Commission as to them; and respondents Ted E. Wolfe, Jack Ruben, L. G. Williams and Growers' Produce Exchange, a corporation, having answered the said amended and supplemental complaint under date of December 9, 1933, admitting all the allegations thereof to be true, waiving hearing on the charges therein set forth, refraining from contesting the proceeding, and consenting that the Commission might make, enter and serve upon them, and each of them, an order to cease and desist from the violations of law therein alleged, thereupon this cause came on for final disposition pursuant to Rule III of the Rules and Regulations duly adopted for the purpose of carrying out the provisions of the aforesaid act, due notice of which was served upon each of the respondents with the aforesaid amended and supplemental complaint, and the Commission having duly considered that respondents Northern Fruit & Produce Co., a corporation, Nathan Ruben, and Lee W. Wolfe, are in default 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 Northern Fruit & Produce Co., is a corporation organized under the laws of the State of Illinois, formerly having its office and place of business in the city of Chicago,

State of Illinois, but no longer doing business, its affairs now being in the hands of a receiver, Mr. Arthur C. Wick, of 100 West Monroe Street, Chicago, Ill. The respondent Ted E. Wolfe was an employee of the aforesaid company as an inspector of seed potatoes and is now, together with respondents Jack Ruben and L. G. Williams, one of the incorporators and officers of the respondent Growers' Produce Exchange, a corporation organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business at 3108 West Fifty-first Street, Chicago, Ill. Lee W. Wolfe is secretary of the respondent, Northern Fruit & Produce Co. and has been its active manager. Respondent Nathan Ruben is president of the Northern Fruit & Produce Co.

PAR. 2. For approximately three years last past the respondent Northern Fruit & Produce Co. has been engaged in the business of buying and selling seed potatoes and also operating as a commission merchant dealing in seed potatoes, purchasing 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 seed potatoes were in Chicago awaiting resale and transshipment prior to December, 1932, the said company employed the respondent Ted E. Wolfe to certify and tag the bags in which said seed potatoes were contained. Respondent Ted E. Wolfe falsely, for hire, designated himself as "Mid-West Agricultural Institute" and upon the instructions of the company thereupon certified and tagged the seed potatoes with tags describing them as "certified" by the "Mid-West Agricultural Institute", and the seed potatoes thus certified and tagged, the Northern Fruit & Produce Co., acting sometimes as broker and sometimes as middleman, resold and transshipped into and through various other states of the United States, to various buyers, other commission merchants, middlemen, wholesalers, jobbers, and chain stores at a price which included a premium charged and received by reason of such false certification and tagging. Heretofore a complaint was issued by the Commission against the respondents Northern Fruit & Produce Co. and Ted E. Wolfe and on December 6, 1932, an order was issued against these two respondents, requiring them to cease and desist from the aforesaid practices. Thereafter these two respondents have conducted their seed potato business through the agency of the other respondents herein, namely, Growers' Produce Exchange, Lee W. Wolfe, Jack Ruben and L. G. Williams, individuals, in the manner and using further unfair methods of competition as hereinafter set out.

PAR. 3. Respondents and each of them cause seed potatoes when sold, to be shipped from and to the city of Chicago in the State of

Illinois into and through the various other states from the sellers and from themselves to the purchasers thereof. In the course and conduct of their business, as aforesaid, respondents and each of them have been and are 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-innoculating, 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 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 freedom from destructive plant diseases, under the supervision of an accredited federal or state institution or organization. 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. The aforesaid respondents in the course and conduct of their business as aforesaid, since the Commission's order to cease and desist as aforesaid have made a practice of requesting inspection, by the Bureau of Agricultural Economics of the United States Department of Agriculture, of the carloads of potatoes by respondents shipped and sold in interstate commerce as aforesaid, and the said bureau, in accordance with its usual practice, has been furnishing to respondents in response to such requests, inspections and reports of two kinds, viz: (a) Report without reference to size, quality or grade, known as "for condition only", (b) With ref-

erence to size, quality and grade, as well as with reference to condition of the car and the load. When an inspection of whichever kind respondents may have requested has been made, an inspection certificate is made out, given a number, and filed with the United States Department of Agriculture in Washington and a copy thereof is supplied by the said bureau to these respondents. Respondents, well knowing the meaning which the word "Certified" has come to have by reason of the aforementioned circumstances, and intending to continue to deceive purchasers and prospective purchasers as to the manner, place and source of inspection and certification of the seed potatoes sold and offered for sale since December, 1932, have been and still are attaching to the bags of seed potatoes shipped in interstate commerce, tags in words and figures following, to wit:

<p>OSKY WOW WOW Brand Seed and Table POTATOES Chief of them all Northern Fruit & Produce Co., Chicago</p>

[Reverse]

<p>The ----- in this sack were grown in MINNESOTA and came from car 19548 and are fully described in Federal Inspection Certificate No. 173449 now on file at U.S. Department of Agriculture, Washington, D.C.</p>
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PAR. 6. Under and by reason of the general and common understanding on the part of wholesalers, jobbers, retailers and potato planters, by means of the aforesaid misleading reference to the "Federal Inspection Certificates" and "U.S. Department of Agriculture", respondents, and each of them, in the course and conduct of their business, are falsely representing to purchasers and prospective purchasers that such seed potatoes have been competently and disinterestedly inspected while growing in the field, by or under the auspices of a Federal Agency, by which it has been certified that such seed potatoes are free from "dwarf", "running out", "mosaic" and any other potato disease determinable by inspection of the seed potato plant while growing and that they are "certified" potatoes

within the meaning of the general and common understanding of the phrase "certified seed potatoes" as above set out, when in truth and in fact such is not the case, and prospective purchasers, believing and relying upon the truth of such representations, purchase respondents' seed potatoes at a price higher than they would pay 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. 7. In the course and conduct of their business, as aforesaid, respondents, and each of them, have represented to prospective purchasers that they were selling and shipping to such purchasers seed potatoes designated by Federal Inspection Certification as "U.S. No. 1 Grade", and that the potatoes in said shipments were true to variety, when in truth and in fact such potatoes were neither of such grade nor true to variety.

PAR. 8. The representations of respondents as aforesaid have been and are passed on by respondents to, through and by the various buyers, commission merchants, middlemen, wholesalers, jobbers, and chain stores, as aforesaid, to the ultimate purchasers who, believing and relying thereon, purchase and plant seed potatoes of a quality and condition productive of inferior crops. The aforesaid methods used by respondents, their agents, officers, servants and employees have a tendency to, and do unfairly result in (a) respondent companies' being able to sell its so-called "certified" seed potatoes at a greater profit than can be obtained by competitors who do not so misrepresent to their prospective purchasers and, (b) respondent companies 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 respondents' competitors to respondents 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."

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, and the answers of respondents Ted E. Wolfe, L. G. Williams, Jack Ruben and Growers' Produce Exchange, a corporation, admitting all the allegations thereof to be true, waiving hearing on the charges therein set forth, refraining from contesting the proceeding and consenting that the Commission might make, enter and serve upon all of them and each of them an order to cease and desist from the violations of law therein alleged, and respondents Northern Fruit & Produce Co., a corporation, Nathan Ruben and Lee W. Wolfe having failed to appear at the time and place fixed by the Commission for them to show cause why an order should not be entered against them and having failed to file answer to the complaint of the Commission, duly served upon them and upon each of them, and now being in default; and the Commission having made its findings as to the facts and the conclusion that each of the said respondents 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 respondents, and each of them, and their agents, representatives, servants, and employees, in connection with the sale and shipment in interstate commerce of seed potatoes, cease and desist as follows:

(1) From directly or indirectly representing to the purchaser or prospective purchaser by means of tags attached to said seed potatoes, or in any other manner, that the said seed potatoes have been inspected or certified with reference to size, quality or grade when such is not the fact.

(2) From representing, directly or indirectly, that such seed potatoes have been inspected for "dwarfing", "running out",

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“mosaic”, or any other potato disease determinable only by inspection of the seed potato plant while growing, when such seed potatoes do not come from plants so inspected.

(3) From representing, directly or indirectly, by reference to Federal inspection certificate numbers on tags attached to the bags in which said seed potatoes are shipped, or in any other manner, that the said seed potatoes have been inspected and reported upon by any department or bureau of the United States Government with reference to size, quality and grade when the Federal inspection referred to is an inspection by the Bureau of Agricultural Economics of the United States Department of Agriculture of said seed potatoes, of that kind and nature known as an inspection and report “for condition only.”

(4) From representing, directly or indirectly, that the said seed potatoes have been inspected or certified to in any other manner whatsoever than is actually the case, and

(5) From representing, directly or indirectly, that such seed potatoes are of a grade known and designated as “U.S. No. 1” or that the potatoes in any one shipment thereof are true to variety when such is not the fact.

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
TUTTLE'S TITE-ON CEMENT 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 2133. Complaint, Dec. 5, 1933—Decision, Mar. 19, 1934

Where a product correctly termed vitreous enamel, and consisting of a glass manufactured with the same ingredients, and in much the same manner, as glass, but with the surface appearance of porcelain, though not true porcelain, long since developed by ceramic manufacturers, had come in recent years to be so widely and continuously advertised by refrigerator and other manufacturers using vitreous enamel surfaces on their products, as porcelain enamel finish, that vitreous enamel surfaces had widely come to be accepted and understood by such manufacturers and the consuming public as "porcelain enamel"; and thereafter a corporation engaged in the manufacture of a thin, cementlike material intended and sold for use as a paint or lacquer in finishing or surfacing refrigerators, tables, chairs, and various other articles, so as to simulate in appearance that kind of surface or finish which had come to be known to the general public as "porcelain enamel", as aforesaid, and in the sale thereof to manufacturers, wholesalers, and retailers,

Designated said material on labels and in advertising as "C. S. Porcelain", and in circular letters addressed and mailed to prospective purchasers featured said designation, and the word "porcelain", through such statements as "We have been successful in developing an air hardening Porcelain", etc., "This Porcelain is not poisonous", etc., "This Porcelain bakes at a low temperature", etc.;

Notwithstanding fact that said preparation, which contained not to exceed one percent of silica and alumina, main constituents of clay (chief ingredient of true porcelain), was neither that product known to manufacturers and consumers as porcelain or porcelain enamel, or generally accepted by them as such and did not produce a surface having the equivalent desirable characteristics of a porcelain enamel surface, as respects resistance to heat, abrasion, washing solutions, and fruit acids;

With the result that members of the consuming public purchased articles such as refrigerators, table tops, and others finished and surfaced with said "C. S. Porcelain" as and for articles finished with porcelain enamel, and it passed on to its immediate customers the means of receiving the ultimate consumer, and with tendency to mislead and deceive not only purchasers and prospective purchasers of its said product, but purchasers and prospective purchasers of articles surfaced and finished therewith by others in the belief that said product and articles had the same or equivalent characteristics as genuine porcelain or porcelain enamel, and thereby to 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. PGad B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of a cementlike material for use in surfacing refrigerators, tables, etc., so as to simulate the appearance of "porcelain enamel", and in the sale of such material to manufacturers, wholesalers and retailers, and with principal place of business in Chicago, with advertising falsely or misleadingly and misbranding or mislabeling 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; in that respondent designates its said product as "C. S. Porcelain", and uses the word "porcelain" in describing the same, notwithstanding fact that said product is neither a genuine porcelain, nor a porcelain enamel as the latter term has come to be understood, in recent years, through widespread usage; with effect of misleading and deceiving not only prospective ultimate purchasers of said product, but also consumer purchasers of articles surfaced and finished therewith, into the erroneous belief that product in question and surface or finish of said articles have the same desirable characteristics as porcelain or porcelain enamel, or equivalent characteristics, and into purchasing the same in such erroneous belief, and of passing on to immediate customers the means of deceiving the ultimate consumer, and with capacity and tendency so to mislead and deceive purchasers and prospective purchasers, of said product or articles, as aforesaid, and thereby to divert trade from and otherwise injure competitors; all to their prejudice and that of the public.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 5th day of December, 1933, issued its complaint against the respondent herein, Tuttle's Tite-On Cement Co., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Said complaint was duly

¹ The allegations of the complaint are set forth substantially verbatim in the findings, respondent having defaulted by reason of its failure to appear or answer, as set forth below.

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served upon said respondent on the 7th day of Dec., 1933. Attached to said complaint and served upon respondent as aforesaid was a notice fixing the 12th day of Jan., 1934 and the office of the Federal Trade Commission in Washington, D.C., as the time and place of hearing upon the charges set forth in said complaint. Said notice further notified said respondent that an answer to said complaint would be required to be filed with the Commission on or before said date for hearing and that upon failure to appear or answer the following provisions of the Rules of Practice adopted by the Commission would be applicable, to wit:

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.

Said respondent having failed either to appear or to file answer to the complaint herein, it is hereby found and adjudged to be in default by reason of such failure to appear or to file answer.

Thereupon, This proceeding came on for hearing by the Commission on said default and the Commission having duly considered the matter and being fully advised in the premises, finds, pursuant to said Rules of Practice, that the allegations of said complaint are true and that respondent has waived hearing on the charges set forth herein. The Commission further finds that this proceeding is to the interest of the public and 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 and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4507 Ravenwood Avenue, in the city of Chicago, State of Illinois. Said respondent trades under its own corporate name.

Respondent is now and for more than one year last past has been engaged in the manufacture and sale to manufacturers, wholesalers and retailers of a product known and designated by it on its labels and in its advertising matter as "C. S. Porcelain", a thin cement-like material intended and sold for use as a paint or lacquer in finishing or surfacing refrigerators, tables, chairs, and various other articles in such manner as to simulate in appearance that kind of surfacing or finishing which has come to be known to the general public as "Porcelain Enamel."

PAR. 2. Respondent causes its said product "C. S. Porcelain" when so sold by it to be transported from the State of Illinois into

and through various other States of the United States to the purchasers hereof and in the course and conduct of its business, as aforesaid, is in competition with various other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of surfacing materials, lacquers, varnishes, paints, enamels, porcelains and porcelain enamels.

PAR. 3. Approximately one hundred years ago ceramic manufacturers developed a product that could be fused on to a metal base, which product was substantially the same as a product now correctly termed vitreous enamel which is a glass manufactured with the same ingredients and in much the same manner as glass and having the surface appearance of porcelain. True porcelain is a ceramic product composed of (approximately) 40 percent kaolin or china clay, 10 percent ball clay, 25 percent feldspar, and 25 percent potter's flint, and is fired or baked at temperatures varying between 2,300 and 2,400 degrees Fahrenheit, whereas vitreous enamel is a coating which is put on refrigerators, bath tubs and tables over a metal base, usually iron or steel, and is not a true porcelain. Although vitreous enamel is a ceramic product, there is little in common between porcelain and vitreous enamel. However, for approximately nine years last past, refrigerator and other manufacturers using vitreous enamel surfaces (the principal ingredient of which is silica, which is found in kaolin or china clay, feldspar, ball clay or quartz) on their products have so widely and continuously advertised their product as having a porcelain enamel finish that such vitreous enamel surfaces have widely come to be accepted and understood by such manufacturers and the consuming public as "porcelain enamel." Such porcelain enamel is sprayed on the metal to be treated and fused thereon at a temperature of from 1,600 to 2,000 degrees Fahrenheit, producing a hard, durable finish which is resistant to heat, fruit acids and washing solutions, and which has various and divers other desirable characteristics. Respondent's product "C. S. Porcelain" may be applied either by a process permitting air-hardening or it may be baked upon the surface to which it is applied at a temperature of about 128 degrees Fahrenheit. In such a product are both silica and alumina, the main constituents of clay, but in quantities not exceeding one percent of the total compound; it is not a material generally accepted or designated by manufacturers and consumers as porcelain or porcelain enamel, nor is it known to them as such; when applied to a surface it does not produce a surface equivalent in desirable characteristics to a porcelain enamel surface, namely, it is not so resistant to heat, abrasion, washing solutions and fruit acids; and it is neither a porcelain nor a porcelain enamel.

PAR. 4. Respondent's methods of sale are as follows: It forms contact with its customers and prospective customers through the medium of circular letters addressed and mailed to prospective purchasers. In and through such medium the following, among other similar statements and representations, were and are used and made by respondent in the sale and the attempted sale of its product "C. S. Porcelain":

We have been successful in developing an airhardening *Porcelain* which dries, dust proof, from five to ten minutes. Can be sprayed, successfully, on enamel where it is discolored by acids.

This *Porcelain* is not poisonous, has no odor, does not taint food, therefore, it can be, successfully, sprayed on the interior of electrical refrigerators. We manufacture it in white and all colors. It is not porous, therefore, it can be washed with just a damp cloth or with soap and water. This is manufactured in three effects—a flat finish, a satin finish and a lustrous finish. It is durable and reasonable in price.

This *Porcelain* bakes at a low temperature. At 120 degrees in forty-five minutes. When used on metal it requires a primer. We furnish a demonstration or sample as the case may require.

C. S. *Porcelain* is, especially, recommended for refinishing used refrigerators. It is *not necessary to remove the old finish*, sand surface of box, lightly, if the surface is chipped in spots, we recommend "*Tuttle's Quick Set*" for filling in these chipped places, then sand these spots and you are ready to spray the entire refrigerator with "*Tuttle's C. S. Porcelain.*" This work can be done in the apartment with a portable spray equipment or in your shop.

PAR. 5. The statements and representations of respondent as described in paragraph 4 herein are false and misleading, among other particulars, in that:

(1) Respondent's product contains not exceeding one percent of silica and alumina, the main constituents of clay, whereas true porcelain is a ceramic product composed of approximately 40 percent of kaolin or china clay, 10 percent of ball clay, 25 percent of feldspar and 25 percent of potter's flint;

(2) Respondent's product is not known to manufacturers and consumers as porcelain or porcelain enamel, nor generally accepted by them as such;

(3) Respondent's product upon application does not produce a surface equivalent to the desirable characteristics of a porcelain enamel surface in that it is not so resistant to heat, abrasion, washing solutions and fruit acids; and

(4) Respondent's product is neither a porcelain nor a porcelain enamel.

PAR. 6. The statements and representations described in paragraph 4 hereof are false and misleading in that the members of the consuming public as a direct result of said representations purchase

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finished products such as refrigerators, table tops, and other articles which have been finished and surfaced with respondent's said "C. S. Porcelain" in the belief that said articles are finished with porcelain enamel, when such is not the fact. By the use of the false and misleading representations appearing in its circulars, as aforesaid, respondent passes on to its immediate customers the means of deceiving the ultimate consumer. Such false and misleading representations of respondent are further calculated to and have the tendency to mislead and deceive not only the purchasers and prospective purchasers of respondent's said product but likewise the purchasers and prospective purchasers of articles which have been surfaced and finished by others with respondent's product into the erroneous belief that said product, and the said articles surfaced and finished therewith, have the same or equivalent characteristics as genuine porcelain or porcelain enamel, when such is not the fact, thereby tending to divert trade from and otherwise injure competitors of respondent.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce, and are in 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 duly heard by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Tuttle's Tite-On Cement Co., a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale or sale in interstate commerce and in the District of Columbia of the product designated by respondent as "C. S. Porcelain" and in connection with the advertising, offering for sale or sale in such commerce of any other product of substantially similar composition or content do cease and desist from using the word "Porcelain" or the words "Porcelain Enamel"

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either standing alone or in connection or conjunction with the letters "C. S." or with any other letters, word or words.

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

Complaint

IN THE MATTER OF
QUAKER CITY CHOCOLATE & CONFECTIONERY
COMPANY

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

Docket 1773. Complaint, Mar. 11, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of candies, including assortments composed of, (a) chocolate covered penny candies, of uniform size and shape, and (b) larger pieces or articles of merchandise, acquisition of which, as prizes, without further charge, was determined by ultimate purchaser's chance selection of one of a relatively few of said chocolate covered candies, the enclosed concealed centers of which differed in color from that of the majority,

Sold such assortment to jobbers and wholesalers, in competition with concerns who do not offer and place in the hands of others additional candy or merchandise, to be given to purchasers by lot or chance, and in competition with candies, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of the candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase its candies in preference to those of competitors because of the chance of securing certain pieces or other merchandise, free of charge, competitors who do not follow such a practice were put to a disadvantage, and trade was diverted from them to it and others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy was merchandised, retailers were provided with the means of violating the laws and public policy of many of the States in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

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. Henry C. Lank and Mr. G. Ed. Rowland 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 Quaker City Chocolate & Confectionery Co., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of 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 Pennsylvania, with its principal office and place of business located at 2134-2160 Germantown Avenue in the city of Philadelphia, State of Pennsylvania. It is now and for more than five years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States to said purchasers. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candies. The said assortments of candies are composed of a number of pieces of chocolate-covered candies of uniform size and shape together with a number of larger pieces of candy and/or certain other merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of the said chocolate covered candies in said assortments have the same colored centers, but a small number of said chocolate covered candies have centers of a different color. The pieces of candy of uniform size and shape in said assortment retail at the price of 1 cent each but the purchaser who procures one of said candies having a center of a different color than the majority of said candies is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to and/or one of the articles of merchandise heretofore referred to. The aforesaid purchaser of said candies who procures a candy having a center colored different from the majority of said pieces of candy is thus to

procure one of the said larger pieces of candy or one of the said articles of merchandise wholly by lot or chance.

PAR. 3. The aforesaid wholesale or jobber customers of respondent resell said assortments of candies to retail dealers in various States of the United States and said retail dealers expose said assortments for sale and sell said candies to the purchasing public according to the aforesaid plan or plans whereby the purchaser of said candies having a particular colored center procures and receives free of charge one of the said larger pieces of candy and/or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others a means of conducting a lottery whereby said larger pieces of candy and/or articles of merchandise are distributed by said dealers to the purchasing public wholly by lot of chance in connection with respondent's said sales plan.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof are many who sell chocolate and other candies at wholesale, and who do not offer and place in the hands of others any additional candies or other merchandise to be given to purchasers by chance or otherwise. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of the chance of obtaining certain pieces of candy or other merchandise free of charge. For about five years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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, the Federal Trade Commission issued and served a complaint upon the respondent, Quaker City Chocolate & Confectionery Co., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondent entered its appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission

whereby it was admitted that the facts set forth in the said complaint, Docket No. 1773, as to respondent's methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of sale of candy identical with or similar to those used by the respondent herein, the Federal Trade Commission might, without further proceedings of any kind, or notice to respondent, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondent herein to be unfair methods of competition, and issue its order requiring said respondent to cease and desist from such unfair methods of competition; and said respondent agreed to be bound by and obey said order to cease and desist. It was further agreed that said respondent admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondent to the charges of said complaint in lieu of any other answer to be filed by said respondent. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondent herein to be unfair methods of competition. [291 U. S. 304; this volume, p. 684, et seq.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Quaker City Chocolate & Confectionery Co., is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia, State of Pennsylvania. Respondent is now, and for more than eight years last past, has been engaged in the manufacture of candy in said city and State and in the sale and distribution of said candy to wholesalers and jobbers in the State of Pennsylvania and other States of the United States. It causes the said candy, when sold, to be shipped or transported from its prin-

cipal place of business in the State of Pennsylvania to purchasers thereof in the States of the United States other than the State of Pennsylvania. In so carrying on said business respondent is and has been engaged in interstate commerce, and is and has been in active competition with other corporations, partnerships, and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 above, the respondent has been selling to wholesalers and jobbers certain packages or assortments of candies. The said assortments of candy are composed of a number of pieces of chocolate-covered candy of uniform size and shape, together with a number of larger pieces of candy, or certain other articles of merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of the said chocolate-covered candies in said assortments have the same colored centers, but a small number of said chocolate-covered candies have centers of a different color. The pieces of candy of uniform size and shape in said assortment retail at the price of one cent each, but the purchaser who procures one of said candies having a center of a different color than the majority of said candies, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to, or one of the articles of merchandise heretofore referred to. The aforesaid purchaser of said candies who procures a candy having a center colored different from the majority of said pieces of candy thus procures one of the said larger pieces of candy, or one of the said articles of merchandise, wholly by lot or chance.

PAR. 3. The aforesaid wholesale or jobber customers of respondent resell said assortments of candies to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale and sell said candies to the purchasing public according to the aforesaid plan or plans, whereby the purchaser of said candies having a particular colored center procures and receives free of charge one of the said larger pieces of candy or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others a means of conducting a lottery whereby said larger pieces of candy, or articles of merchandise, are distributed by said dealers to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof are many who sell chocolate and other candies at

wholesale, and who do not offer and place in the hands of others any additional candies or other merchandise to be given to purchasers by lot or chance or otherwise. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of the chance of obtaining certain pieces of candy, or other merchandise, free of charge. For about eight years last past respondent has engaged in the acts and practices under the conditions and circumstances, and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondent, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondent do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondent and others using similar methods, from said competitors. The use of such methods by respondent in the sale and distribution of candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Quaker City Chocolate & Confectionery Co., under the conditions and circum-

stances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Quaker City Chocolate & Confectionery Co., its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape and quality, having centers of different colors, together with larger pieces of candy or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being

sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy having a particular colored center that a larger piece of candy, or other article of merchandise, will be given free to said purchaser.

It is further ordered, That the respondent above-named within 30 days after the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made 47 other findings and/or orders in the candy lottery cases, including in this number three cases involving sale of chewing gum by this method.

Twenty of these involve the use of the same scheme set forth in *Quaker City Chocolate* findings above, namely, sale of assortments in which the chance selection of a certain piece differing in color from that of the majority, entitles the purchaser to a prize in the form of a larger piece, or article of merchandise, and in which the purchaser of the last piece in the assortment is also, in some cases, awarded such a prize.

Ten of the cases involve the use of a scheme in which there is concealed within the individual wrappers enclosing the separate bars or other pieces of candy making up the assortment, a slip containing the figure 1¢, 2¢, 3¢ (and also, in the case of some, 4¢, or 5¢) as the price to be paid by the consumer to the retailer, depending on the former's chance selection. These are reported in the case of *Minter Brothers*, Docket 1785, and following memoranda, 18 F. T. C. 287, 295, et seq.

Four of the cases involve the use of a scheme in which a relatively few of the individually wrapped pieces or bars making up the assortment, contain a concealed slip advising the purchaser in so many words, or through the presence of some particular legend thereon, as preannounced, that he is entitled to a prize in the shape of additional candy in some form or other, as arranged in the case of the particular assortment, or in some cases, to some article of merchandise included with the assortment. Some of the assortments also provide that the purchaser of the last of the original units making up the assortment is likewise to receive a prize in the form of candy

or merchandise. They are reported in the case of *Advance Candy Co., Inc.*, Docket 1792, and accompanying memoranda, 18 F. T. C. 298, 305, et seq.

Three of the cases involve the sale of chewing gum through the use of concealed colors, similar to the schemes set forth and described in the *Quaker City Chocolate case, supra*, and following memoranda at pages 269 and 278, et seq. They are reported in *International Gum Corp.*, Docket 1799 and following memoranda, 18 F. T. C. 308, 316.

Four of the cases involve the sale of two or more types of assortments, based on different schemes above outlined. They are reported in the case of *Johnson-Fluker Co.*, Docket 1831, and following memoranda, 18 F. T. C. 317, 326, et seq.

Four of the cases involve the sale of assortments in which a few of the individually wrapped bars, or pieces of candy making up the same, contain an enclosed concealed slip advising the chance purchaser that the particular piece, or bar, is free. They are reported in the case of *Curtiss Candy Co. et al.*, Docket 1853, and following memoranda, 18 F. T. C. 329, 337, et seq.

Two of the cases involve the sale of candy making up the assortments, with punch boards, in which the color of the ball punched, or number of the ticket or slip, decides the kind of candy, or article, if any, the purchaser is to receive for his punch. They are reported in the case of *Rittenhouse Candy Co.*, Docket 2071 and following memorandum, 18 F. T. C. 339, 346, et seq.

Of the twenty cases which were referred to as involving the use of the same scheme as that set forth in the *Quaker City Chocolate case* above, five involve findings and orders based upon respondent's stipulations similar to that set forth in the paragraph of the *Quaker City Chocolate case, supra*, on pages 271, 272, and fifteen involve consent orders, the orders in both groups being similar except as required to take care of variations in the exact nature of the assortment, and the presence or absence of explanatory display cards.¹

¹ Thus the order in the case of *Elmer Candy Co.*, Docket 1788, the first of the group, requires that respondent, its agents, etc., in the manufacture, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

- (1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device or gift enterprise.
- (2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.
- (3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape and quality,

Notes of the five findings and orders referred to, together with dates on which complaints issued, follow:

Elmer Candy Co., Docket 1788—Complaint, April 28, 1930.—Respondent manufacturer, with principal office and place of business in New Orleans, sells to wholesalers and jobbers, packages or assortments of chocolate-covered penny candies of uniform size, shape and quality, together with a number of larger pieces, or articles of merchandise, given as prizes to the chance purchaser procuring a piece with a different colored center from that of the majority. Explanatory display cards, for retailer's use in offering the candies to the public, are furnished by respondent "to said wholesale and retail dealers and jobbers with each of said packages or assortments".

Pasquale Margarella, Docket 1790—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, packages or assortments of chocolate covered penny candies, for sale under a plan similar to that described in the *Elmer Candy case* above, except that the purchaser of the last of said chocolate covered candies is also to receive one of the larger pieces of candy, or articles of merchandise, included with the assortment. Respondent also furnishes explanatory display cards, as above set forth.

Metro Chocolate Co., Inc., Docket 1808—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, certain packages or assortments of two types, namely, (1) assortments composed of a number of individually wrapped, small, penny pieces of hard candy of uniform quality, size and shape, together with a number of larger pieces, and (2) chocolate covered penny candies of uniform size, etc., together with a number of larger pieces, or articles of merchandise, which pieces or articles of merchandise, as the case may be, are given to the chance purchaser of a piece of hard candy flavored or colored differently from the majority thereof, or of a chocolate

having centers of different color, together with larger pieces of candy, or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining by the ultimate purchaser of a piece of candy having a particular colored center that a larger piece of candy, or other article of merchandise will be given free to said purchaser.

covered penny candy having a concealed center which differs from that of the majority, or to the purchaser of the last piece or unit in the respective assortments. Explanatory display cards are supplied for retailer's use in offering such candies for sale.

Chris Baruxes et al., doing business as *Bruw Candy Co.* and *C. Baruxes & Sons*, Docket 1892—Complaint, January 9, 1931.—Respondent partners, manufacturers, with principal office and place of business in Newark, Ohio, sell to wholesale and retail dealers and jobbers, packages or assortments of chocolate-covered penny candies for sale under a merchandising scheme similar to that above described.

Benjamin Weisberg, doing business as *D. Arnould Co.*—Docket 1907—Complaint, January 23, 1931.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesale dealers and jobbers, a certain package or assortment of candies known and designated by it as "Lady Luck", and composed and sold, as described in the findings, as follows:

The said assortment of candies is composed of 150 small chocolate-covered candy wafers of uniform size, shape and quality, together with 10 larger pieces of candy and two small boxes each containing 10 pieces of chocolate-covered candy, which larger pieces of candy and small boxes of candy are to be given as prizes to purchasers of said chocolate-covered wafers in the following manner:

One hundred and thirty-eight of the said chocolate-covered candy wafers of uniform size, shape and quality in said assortment have white centers; 10 of the said chocolate-covered candy wafers have pink centers; and 2 of the said chocolate-covered candy wafers have brown centers. The color of the centers of the said chocolate-covered candy wafers are effectively concealed from the prospective purchaser. The said chocolate-covered wafers of uniform size, shape and quality in said assortment retail at the price of one cent each but the purchaser who procures one of the said chocolate-covered candy wafers having a pink center is entitled to receive and is to be given free of charge one of the larger pieces of candy heretofore referred to, and the purchaser who procures one of the said chocolate-covered wafers having a brown center is entitled to receive and is to be given free of charge one of the boxes containing 10 pieces of chocolate-covered candy heretofore referred to. The afore-said purchasers of said chocolate-covered candy wafers who procure a candy having a pink center or a brown center are thus to procure one of the said larger pieces of candy or one of the said boxes containing 10 pieces of candy wholly by lot or chance.

Notes of the fifteen consent orders above referred to, together with dates on which complaints issued, follow:

Voneiff-Drayer Co., Docket 1724—Complaint, November 21, 1929.—Respondent manufacturer, with principal office and place of business in Baltimore, sells to wholesale dealers, certain packages or assortments of chocolate-covered candies, which it names and designates as “Vee-dee” and which are described in paragraphs 2 and 3 of the complaint, as follows:

Said packages or assortments of candies are composed of three assortments, called respectively, “Bar Assortment”, “Package Assortment”, and “Blank Assortment.” Each of said assortments of candies are composed of a number of chocolate-covered pieces of candy, of uniform size and shape, which are sold at retail at the uniform price of 1 cent each, together with a number of larger pieces of candy known as “Bars” or “Patties”, which are to be given as prizes to purchasers of said chocolate-covered candies, in the following manner:

Among aforesaid chocolate-covered candies are a number having colored centers, and when said packages of candies are displayed for sale to the consuming public every purchaser of aforesaid chocolate-covered candies at the price of 1 cent each who procures one of said candies having a colored center is entitled to receive, and is to be given free of charge, one of the “Bars” or “Patties” heretofore referred to. Also included in the assortments known as “Bar Assortment” and “Package Assortment” is a larger piece of candy known as a “Bar” or “Patty”, and a 4-ounce box of chocolates, respectively. The purchaser of the last piece of aforesaid chocolate covered candies at the price of 1 cent each in each of said assortments of candies, respectively, is entitled to receive, and is to be given free of charge, said “Bar” or “Patty”, or said 4-ounce box of chocolates. Aforesaid purchasers of said candies who procure candies having a colored center, or who purchase the last piece of candy in each of said assortments, are thus to procure one of said larger pieces of candy, or a box of 4-ounce chocolates, wholly by lot or chance.

The package or assortment of candies known as “Blank Assortment” contains a number of pieces having a colored center, as in the other two assortments aforesaid, but the larger pieces of candy which are to be given as prizes to purchasers of the candy having colored centers, are not supplied by respondent but are supplied to the retailer by the wholesale dealer to whom respondent sells the assortment, and such larger pieces of candy or prizes are wholly within the discretion of said wholesale dealer.

Respondent furnishes with each of said packages or assortments of candies called "Bar Assortment" and "Package Assortment", a display card to be used by the retailer in offering said candies for sale, which display card bears a legend and statement informing the reader that persons purchasing said candies having a colored center, and purchasing the last piece of candy in each of said assortments, will receive one of said larger pieces of candy free of charge.

Aforesaid wholesale dealers of respondent resell said "Vee-Dee" Assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid explanatory card and sell said candies to the purchasing public according to aforesaid plan, whereby the purchaser of said candies having colored centers and the purchaser of the last piece of candy in said assortments procure and receive free of charge one of said larger pieces of candy, or a 4-ounce box of chocolates, hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy and 4-ounce boxes of chocolates are distributed and given to the purchasing public wholly by lot or chance.

Lewis Bros., Inc., Docket 1761—Complaint, February 17, 1930.—Respondent manufacturer, with principal office and place of business in Newark, N. J., sells to wholesalers and jobbers, certain packages or assortments of chocolate covered penny candies of three types (together with appropriate explanatory display cards for each), as follows: The "Winabar", composed of a number of boxes of chocolate covered candies, of uniform size, etc., together with a number of larger pieces in which the chance purchaser, for 1 cent, of one of a relatively few pink enclosed centers, is entitled to one of the larger pieces; the "New York to Paris", composed of a number of chocolate covered pieces of uniform size and shape, together with a number of larger pieces, and certain toy aeroplanes, sold under a plan by which the chance purchaser of 1 of 7 orange enclosed centers in the assortment, receives 1 of the larger pieces, and the chance purchasers of the 2 pieces which have green enclosed centers receive prizes; and the "Winanegg" package, composed of a number of chocolate covered pieces of uniform size, quality, etc., together with a number of larger pieces, and 2 large decorated candy eggs, and sold under a plan by which the chance purchaser, for a penny, of 1 of 8 orange enclosed centers receives 1 of the larger pieces, and the purchasers of the 2 green enclosed centers receive the candy eggs.

Heidelberg Confectionery Co., Docket 1772—Complaint, March 11, 1930.—Respondent manufacturer, with principal office and place

of business in Philadelphia, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies, together with a number of larger pieces and/or certain other merchandise given as prizes, to the chance purchaser of one of a relatively few pieces, the color of the enclosed concealed centers of which differs from that of the majority.

Hardie Bros. Co., Docket 1786—Complaint, April 28, 1930.—Respondent manufacturer, with principal office and place of business in Pittsburgh, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies, together with a number of larger pieces and/or articles of merchandise, to be given as prizes to change purchasers of one of a relatively few of said candies, the color of the concealed centers of which differs from that of the majority, or to the purchaser of the last of said chocolate-covered pieces in the assortment.

Luden's Inc., Docket 1789—Complaint, April 28, 1930.—Respondent manufacturer, with principal office and place of business in Reading, Pa., sells to wholesalers and jobbers, certain packages or assortment of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces and/or certain other merchandise, given as prizes to the change purchaser of one of a relatively few pieces having enclosed concealed centers of a different color from that of the majority, or to the purchaser of the last one of said chocolate-covered candies in the assortment, and furnishes to said wholesale dealers and jobbers, with each package or assortment, explanatory display cards for the retailer's use in offering the candies for sale.

National Candy Co., Docket 1802—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in St. Louis, sells to wholesale and retail dealers and jobbers, certain packages or assortments of chocolate-covered, 2-for-a-cent candies, together with certain articles of merchandise given as prizes to the chance purchaser of one of said candies, the color of the enclosed concealed center of which differs from that of the majority of said candies, or to the purchaser of the last piece of said candies in the particular assortment, and furnishes to said wholesale and retail dealers and jobbers explanatory display cards for the retailer's use in offering the candies to the public.

American Candy Co., Docket 1807—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Milwaukee, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with (1) a number of larger pieces of candy, to be

given as prizes to the chance purchaser of one of a small number of said chocolate-covered pieces, the color of the enclosed concealed center of which differs from that of the majority, and (2) one still larger piece of candy and/or article of merchandise to be given as a prize to the purchaser of the last piece of said chocolate-covered candies in the assortment, and furnishes to said wholesale dealers and jobbers with each package or assortment, explanatory display cards for retailer's use in offering such candies to the public.

Bunte Brothers, Inc., Docket 1811—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Chicago, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with larger pieces and/or articles of merchandise to be given as prizes to the chance purchaser of one of a small number of said candies, the color of the enclosed concealed centers of which differs from that of the majority, or to the purchaser of the last piece of said chocolate candies in the assortment, and furnishes to said wholesalers and jobbers with each package or assortment, an explanatory display card for the retailer's use in offering such candies to the public.

Charles F. Adams, Inc., Docket 1812—Complaint, May 2, 1930.—Respondent manufacturer, with principal office and place of business in Lancaster, Pa., sells to wholesalers and jobbers, packages or assortments of chocolate-covered penny candies, of uniform size, etc., together with (1) a number of larger, 5-cent pieces, to be given as prizes to the chance purchaser of one of a small number of said chocolate-covered penny pieces, the color of the enclosed concealed center of which differs from that of the majority, and (2) a still larger 25-cent piece of candy, to be given as a prize to the purchaser of the last of said chocolate-covered penny candies in the assortment and furnishes to said wholesalers and jobbers with each package or assortment, an explanatory display card for the retailer's use in offering said candies to the public.

Edgar P. Lewis & Sons, Inc., Docket 1813—Complaint, May 2, 1930.—Respondent manufacturer, with principal office and place of business in Boston, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces, and/or certain other merchandise, to be given as prizes to the chance purchaser of one of a small number of said chocolate-covered candies, the color of the enclosed concealed center of which differs from that of the majority, or to the purchaser of the last piece of said chocolate-covered candies in the assortment, and furnishes to said wholesale

dealers and jobbers with each package or assortment, an explanatory display card for the retailer's use in offering said candies to the public.

A. Karcher Candy Co., Docket 1849—Complaint, June 20, 1930.—Respondent manufacturer, with principal office and place of business in Little Rock, sells to retailers, wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces and/or articles of merchandise to be given as prizes to the chance purchaser of a different colored center, or of the last piece in the assortment, as hereinbefore explained, and furnishes to said wholesale and retail dealers and jobbers, explanatory display cards for the retailer's use in offering said candies to the public.

Dilling & Co., Docket 1867—Complaint, October 23, 1930.—Respondent manufacturer, with principal office and place of business in Indianapolis, sells to retail dealers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces to be given as prizes to the chance purchaser of one of a few different colored centers, or the last piece, as hereinbefore explained, and furnishes to said retail dealers explanatory display cards for their use in offering said candies to the public.

J. N. Collins Co., Docket 1875—Complaint, November 13, 1930.—Respondent manufacturer, with principal office and place of business in Philadelphia, sells to wholesale and retail dealers and jobbers, certain packages or assortments of caramels, together with explanatory display cards for the retailer's use in offering the same to the public. Said assortments, known and designated by respondent as "Nip 'N' Tuck, the Red Head Twins", are described in the complaint as follows:

The said assortment of candies is composed of 300 small pieces of caramel candy of uniform size, shape and quality, together with 16 larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said caramel candies in the following manner:

The said 300 pieces of caramel candy of uniform size, shape and quality are each contained within a wrapper; 285 of the said pieces of caramel candy of uniform size, shape and quality are colored red; 10 of the said pieces of caramel candy are colored white; 5 of the said pieces of caramel candy are colored pink. The color of said pieces of caramel candy, however, is effectually concealed from the prospective purchaser by the aforesaid wrapper. The said pieces of caramel candy of a uniform size, shape and quality

in said assortment retail at the price of two for 1 cent, but the purchaser who procures one of the said pieces of caramel candy colored white or colored pink is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of aforesaid caramel candy of a uniform size, shape, and quality in said assortment is entitled to receive, and is to be given free of charge, one of the larger pieces of candy heretofore referred to. The aforesaid purchasers of said caramel candies who procure a candy colored white or colored pink and the purchaser of the last piece of caramel candy in said assortment are thus to procure one of the said larger pieces of candy wholly by lot or chance.

Blue Hill Candy Co., Docket 1917—Complaint, February 24, 1931.—Respondent manufacturer, with principal office and place of business in St. Louis, sells to wholesale and retail dealers and jobbers, certain packages or assortments of chocolate covered penny candies of uniform size, etc., together with a number of larger pieces to be given as prizes to the chance purchaser of one of a small number of said chocolate candies, the color of the enclosed concealed center of which differs from that of the majority, or to the purchaser of the last piece in the assortment, and furnishes to said wholesale and retail dealers an explanatory display card for the retailer's use in offering said candies to the public.

Fishback Candies, Inc., Docket 1962—Complaint, June 20, 1931.—Respondent manufacturer, with principal office and place of business in Indianapolis, sells to wholesale and retail dealers and jobbers, certain assortments of chocolate covered penny candies of uniform size, etc., together with a number of larger pieces and/or a small package of candy, to be given as prizes to the chance purchaser of one of a small number of said chocolate covered candies, the color of the enclosed concealed center of which differs from that of the majority, or to the purchaser of the last one of said chocolate covered candies in the assortment, as hereinbefore explained, and furnishes to said wholesale and retail dealers and jobbers explanatory display cards for the retailer's use in offering said candies to the public.

The appearances in the foregoing twenty cases were as follows:

Mr. Henry C. Lank and *Mr. G. Ed. Rowland*, for the Commission.

Mr. Edward Clifford, of Washington, D. C., for *Brux Candy Co.* (also doing business as *C. Baruxes & Sons*).

Mr. W. Parker Jones, of Washington, D. C., for *Voneiff-Drayer Co.*, *Luden's, Inc.*, *American Candy Co.*, *Bunte Bros. Co.*, and *Edgar P. Lewis & Sons, Inc.*

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Bilder, Bilder & Kaufman, of Newark, N. J., for Lewis Brothers, Inc.

Gartner & Lemisch, of Philadelphia, Pa., for Heidelberger Confectionery Co.

Lowenhaupt & Waite, of St. Louis, Mo., for National Candy Co.

Windolph and Mueller, of Lancaster, Pa., for Charles F. Adams, Inc.

Mr. Oren S. Hack, of Indianapolis, Ind., for Dilling & Co.

Syllabus

IN THE MATTER OF
IRA W. MINTER AND CLAYTON A. MINTER, COPART-
NERS, DOING BUSINESS UNDER THE NAME AND
STYLE OF MINTER BROTHERS¹

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

Docket 1785. Complaint, Apr. 28, 1930—Decision, Apr. 3, 1934

Where a firm engaged in the manufacture and sale of candy, including two types of assortments composed of, (1) 40 bars of uniform quality, size and shape, within the individual wrappers of which there was concealed a slip containing thereon the figure 1¢, 2¢, 3¢, 4¢ or 5¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, and (2) 48 bars of uniform quality, size and shape, within the individual wrappers of which there were similarly concealed slips containing the figures 1¢, 2¢ or 3¢, as the price to be paid, as aforesaid,

Sold such assortments, together with explanatory display cards for retailer's use in advising ultimate consumer or purchaser of sales plan, under which he might procure a bar at a price ranging from 1 cent to 5 cents, or 1 cent to 3 cents, depending upon the particular assortment, and his chance selection, to wholesalers and jobbers in competition with concerns who do not offer and place in the hands of others packages or assortments of candy available for sale and distribution, without rearrangement, by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral feature of lot or chance connected therewith, and sale of which is adversely affected by that of candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase the candies of said firm in preference to those of competitors due to chance of obtaining one of the pieces therein contained at less than the maximum price of 5 cents or 3 cents, as the case might be, competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance were put to a disadvantage, and trade was diverted from them to said firm and others using similar methods, the industry was injured, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of the several states in selling and distributing candy by lot or chance, the industry was injured, and freedom of legitimate competition therein was restrained and impaired:

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

Complaint

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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. Henry C. Lank and Mr. G. Ed. Rowland 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 Ira W. Minter and Clayton A. Minter, copartners doing business under the firm name and style of Minter Brothers, 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. The respondents, Ira W. Minter and Clayton A. Minter, copartners doing business under the firm name and style of Minter Brothers, have their principal office and place of business located in the city of Philadelphia, State of Pennsylvania. They are engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and cause said products when so sold to be transported from their said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States to said purchasers thereof at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell to wholesalers and jobbers certain packages or assortments of candies.

(a) One of said assortments consists of forty candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus

procure pieces of candy of a uniform quality, size, and shape at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of forty-eight candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, or 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of a uniform quality, size, and shape at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

Respondents furnish with each of said packages of said candy a display card to be used by the retailer in offering said candies for sale, which display card bears a legend or statement informing the prospective purchaser that he may procure said candies for from (a) 1¢ to 5¢, or (b) 1¢ to 3¢, in accordance with the sales plans above mentioned.

PAR 3. Aforesaid wholesale dealers of respondents resell said packages to retail dealers in various States of the United States, and said retail dealers expose said packages for sale in connection with the aforesaid display card and sell said candies to the purchasing public in accordance with the aforesaid plans, whereby the purchaser of said candies pays a price therefor of (a) 1¢, 2¢, 3¢, 4¢, or 5¢, or (b) 1¢, 2¢, or 3¢, said price in each case being determined wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries, in accordance with respondents' said sales plans.

PAR. 4. Respondents' aforesaid practices thus tend to and do induce many of the consuming public to purchase respondents' said candies in preference to the candies of respondents' said competitors because of the chance of obtaining one of said pieces of candy at a price of (a) 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or (b) 1¢ or 2¢ rather than at the maximum price of 3¢, which said prices in each case as to the consuming public are determined wholly by lot or chance.

PAR. 5. 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 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, the Federal Trade Commission issued and served a complaint upon the respondents, Ira W. Minter and Clayton A. Minter, copartners, doing business under the name and style of Minter Brothers, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondents entered their appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission whereby it was admitted that the facts set forth in the said complaint, Docket No. 1785, as to respondents' methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of sale of candy identical with or similar to those used by the respondents herein, the Federal Trade Commission might, without further proceedings of any kind, or notice to respondents, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondents herein to be unfair methods of competition, and issue its order requiring said respondents to cease and desist from such unfair methods of competition, and said respondents agreed to be bound by and obey said order to cease and desist. It was further agreed that said respondents admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondents to the charges of said complaint in lieu of any other answer to be filed by said respondents. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondents herein to be unfair methods of competition. [291 U. S. 304.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Ira W. Minter and Clayton A. Minter, are copartners doing business under the firm name and style of Minter Brothers and have their principal office and place of business in the city of Philadelphia in the State of Pennsylvania. Respondents are now, and for more than five years last past, have been engaged in the manufacture of candy in said city and State and in the sale and distribution of said candy to wholesalers and jobbers in the State of Pennsylvania and other States of the United States. They cause the said candy, when sold, to be shipped or transported from their principal place of business in the State of Pennsylvania to purchasers thereof in the States of the United States other than the State of Pennsylvania. In so carrying on said business respondents are and have been engaged in interstate commerce, and are and have been in active competition with other corporations, partnerships, and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell to wholesalers and jobbers certain packages or assortments of candies.

(a) One of said assortments consists of forty candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of a uniform quality, size, and shape at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of forty-eight candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, or 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of a uniform quality, size, and shape

at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

Respondents furnish with each of said packages of said candy a display card to be used by the retailer in offering said candies for sale, which display card bears a legend or statement informing the prospective purchaser that he may procure said candies for from (a) 1¢ to 5¢, or (b) 1¢ to 3¢, in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers of respondents resell said packages to retail dealers in various States of the United States, and said retail dealers expose said packages for sale in connection with the aforesaid display card and sell said candies to the purchasing public in accordance with the aforesaid plans, whereby the purchaser of said candies pays a price therefor of (a) 1¢, 2¢, 3¢, 4¢, or 5¢, or (b) 1¢, 2¢, or 3¢, said price in each case being determined wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries whereby the price to be paid for one of the aforesaid pieces of candy by the purchasing public is determined wholly by lot or chance, in accordance with respondents' said sales plans.

PAR. 4. Among the competitors of respondents are many who sell candy at wholesale and who do not offer and place in the hands of others, any packages or assortments of candies which may be sold and distributed without rearrangement by lot or chance. Respondents' aforesaid practices thus tend to and do induce many of the consuming public to purchase respondents' said candies in preference to the candies of respondents' said competitors because of the chance of obtaining one of said pieces of candy at a price of (a) 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or (b) 1¢ or 2¢ rather than at the maximum price of 3¢, which said prices in each case as to the consuming public are determined wholly by lot or chance. For about eight years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondents, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection

therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the methods of selling and distributing candy as above described are morally bad and encourage gambling, especially among children; are injurious to the candy industry because they result in the merchandising of a chance or lottery instead of candy; and provide retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondents do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondents and others using similar methods, from said competitors. The use of such methods by respondents in the sale and distribution of candy is prejudicial and injurious to the public and their competitors, and has resulted in the diversion of trade to respondents from their said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondents, Ira W. Minter and Clayton A. Minter, copartners, doing business under the name and style of Minter Brothers, under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the stipulation entered into between the respondents and the chief counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion drawn therefrom that the respondents have violated the provisions of an Act of Congress

Order

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approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, Ira W. Minter and Clayton A. Minter, copartners, doing business under the name and style of Minter Brothers, their agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape and quality containing within their wrappers tickets bearing different prices.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain bars of candy of uniform size, shape and quality will be obtained for a price of 1¢, 2¢, 3¢, 4¢, or 5¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

(b) That certain bars of candy of uniform size, shape and quality will be obtained for a price of 1¢, 2¢, or 3¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

It is further ordered, That the respondents above named within 30 days after the service upon them of this order shall file with the

Memoranda

Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made nine other findings and/or orders, involving the use of the same scheme set forth in the *Minter Brothers case* above, namely, sale of assortments in which there is concealed within the individual wrappers enclosing the separate bars or other pieces of candy, a slip containing the figure 1¢, 2¢, 3¢ (and also, in case of some, 4¢, or 5¢) as the price to be paid by the consumer to the retailer, depending on former's chance selection.

Of the nine cases above referred to, five involve findings and orders, of which findings and orders three are based upon respondents' stipulations consenting thereto, (as set forth in the second paragraph of the findings in the *Minter Brothers case, supra*, on page 290, *supra*) in event of court decision holding the practice an unfair method of competition, as was decided in the *Keppel case*, 291 U. S. 304, and two are based upon defaults under the provisions of Section 3 of Rule III of the Commission's Rules of Practice, the remaining four cases involving consent orders and all the orders being similar except as required to take care of slight variations in the nature of the assortments, and, subject to such qualifications, similar to that set forth in the *Minter Brothers case* above.

Notes of the five findings and orders referred to, together with dates on which complaints issued, follow:

Schwarz & Son, Inc., Docket 1793—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in Newark, N. J., sells to wholesalers and jobbers, packages or assortments composed of forty pieces of hard candy of uniform quality, size and shape, within the individual wrapper of each of which there is concealed a slip of paper bearing the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the amount to be paid by the consumer purchaser to the retailer, depending on his chance selection, and furnishes to wholesale dealers and jobbers, with each of such packages or assortments, explanatory display cards for retailer's use in offering said candies to the public.²

Euclid Candy Co., Docket 1794—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in New York City, and with places of business also in Cleveland and San Francisco, sells to wholesalers and jobbers assortments similar to those described in the *Schwarz case* above, and furnishes to said

² Findings and order pursuant to stipulation referred to in second paragraph of "memoranda", above.

wholesalers and jobbers explanatory display cards as hereinabove described.³

D. L. Clark Co., Docket 1797.—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in Pittsburgh, sells to wholesalers and jobbers, forty-bar assortments of candy, of uniform quality, etc., similar to those hereinbefore described, except that it is set forth that one half of the forty pieces contain within their individual wrappers, 5¢ slips, and furnishes with each of the packages explanatory display cards as hereinbefore described.⁴

Charms Co., Docket 1800.—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in Newark, N. J., sells forty-piece assortments of hard candies of assorted flavors, and of uniform quality, etc., containing within the individual wrappers thereof, slips with the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the price to be paid by the ultimate consumer purchaser to the retailer, as hereinbefore explained, and supplies to wholesale dealers and jobbers for retailer's use in offering said candies to the public, display cards which contain, in addition to necessary explanatory matter, the legends "You have a 50-50 chance", "Every other Pop sold at less than 5¢", and, "If you are lucky you can get one for 1¢".⁴

George H. Ruth Candy Co., Inc., Docket 1869.—Complaint October 30, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, packages or assortments composed of a number of bars of candy of uniform quality, size, etc., containing within the individual wrappers of each, slips as hereinbefore described, and furnishes to said wholesalers and jobbers, explanatory display cards with each package or assortment, for retailer's use as hereinabove set forth.⁵

Notes of the four cases involving consent orders, together with dates on which complaints issued, follow:

The Blackhawk Candy Co., Docket 1791.—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in Davenport, Iowa, sells to wholesalers and jobbers, certain packages or assortments, consisting of 48 chocolate malted milk bars, of uniform quality, size and shape, within the individual wrappers of each of which there is contained a slip bearing the figure 1¢, 2¢, or 3¢, as the price to be paid by the consumer to the

³ Default findings and order as explained in second paragraph of memoranda.

⁴ Findings and order pursuant to stipulation referred to in second paragraph of "memoranda", above.

⁵ Default findings and order as explained in second paragraph of memoranda.

retail merchant, as hereinbefore explained, and furnishes to said wholesalers and jobbers explanatory display cards for retailer's use in offering said candies for sale.

Shotwell Manufacturing Co., Docket 1796.—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in Chicago, and with places of business also in San Francisco and New York City, sells to wholesalers and jobbers, certain packages or assortments composed of 40 bars of candy of uniform quality, etc., within the individual wrappers of each of which there is a slip containing the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the price to be paid by the consumer to the retailer, as hereinbefore set forth, and furnishes to said wholesalers and jobbers, explanatory display cards for the retailer's use in offering said candies to the public.

Overland Candy Co., Docket 1822.—Complaint, May 3, 1930.—Respondent manufacturer, with principal office and place of business in Chicago, sells to wholesalers and jobbers, certain packages or assortments, similar to those described in the Shotwell case above, and furnishes as hereinbefore set forth, explanatory cards for retailer's use.

Rubay Candy Co., Docket 1863.—Complaint, August 12, 1930.—Respondent manufacturer, with principal office and place of business in Cleveland, sells to wholesalers and jobbers, forty-eight-bar assortments of candy of uniform quality, etc., within the individual wrappers of each of which there is a slip containing the figure 1¢, 2¢, or 3¢, as the price to be paid by the consumer to the retailer, as hereinbefore explained, and furnishes to said wholesalers and jobbers, with each of said packages, explanatory display cards for retailer's use in offering said candies to the public.

The appearances in the foregoing nine cases were as follows:

Mr. Henry C. Lank and *Mr. G. Ed. Rowland* for the Commission.
Saul and Joseph E. Cohn and *Mr. Joseph Susiskind*, of Newark, N. J., for Schwarz & Son, Inc.

Mr. M. F. Donegan, of Davenport, Iowa, for The Blackhawk Candy Co.

Gallagher, Rinaker, Wilkinson & Hall, of Chicago, Ill., for Shotwell Manufacturing Co.

Edelson & Paullin, of Chicago, Ill., and *Mr. W. Parker Jones*, of Washington, D. C., for Overland Candy Co.

IN THE MATTER OF
ADVANCE CANDY COMPANY, INC.¹

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

Docket 1792. Complaint, Apr. 29, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of candy, including assortments composed of (a) a number of individually wrapped, penny pieces of hard candy of uniform quality, size and shape, and, (b) a small number of 5-cent packages of such candies, acquisition of which as prizes, and at no additional charge, was determined by the purchaser's chance selection of one of a relatively few of said penny pieces, included with the others, within the individual wrapper of which there was concealed a slip of paper so stating, and (c) a 10-cent package of such candies awarded as a prize, without additional charge, to the purchaser of the last one of the aforesaid penny pieces in the assortment,

Sold said assortments, together with explanatory display cards for retailer's use in advising prospective purchasers of the aforesaid merchandise plan, to wholesalers and jobbers in competition with concerns who do not offer and place in the hands of others additional candies or other merchandise to be given to purchasers by lot, chance or otherwise, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of the candy with the lottery or gaming features;

With result that many of the consuming public were induced to purchase its said candies in preference to those of competitors because of the chance of obtaining as a prize a 5-cent package, or 10-cent package, of candy, competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance, were put to a disadvantage, and trade was diverted from them to it and others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the states in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

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. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.

¹For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

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 Advance Candy Co., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of the said Act, and states its charges as follows:

PARAGRAPH 1. The respondent is a corporation organized under 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 is now and for more than five years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the City of New York, State of New York, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of the said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candies. Said assortments consist of a number of pieces of hard candy of a uniform quality, size, and shape, which pieces of candy retail at the price of 1 cent each. Each of said pieces of candy is contained within a wrapper, and a small number of said pieces of candy contain a slip of paper stating that the purchaser thereof is entitled to a 5-cent package of hard candies as a prize, and at no additional charge. The said printed slip is effectually concealed from the consumer until he has removed the wrapper. The purchaser of the last piece of candy of a uniform quality, size and shape at the price of 1 cent is entitled to receive a 10-cent package of hard candies as a prize, and at no additional charge. The aforesaid purchasers of said candies who procure a piece of candy containing a slip entitling them to a prize, or who purchase the last piece of candy in said assortments, are thus to procure one of the aforementioned prizes wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of candy heretofore referred to

a display card to be used by the retailer in offering said candies for sale to the public, which display card informs the prospective purchaser that the said candies are sold in accordance with the aforementioned sales plan of the respondent.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid display card, and sell said candies to the purchasing public according to aforesaid plan whereby the purchaser of one of the said candies containing a slip entitling him to a prize, and the purchaser of the last piece of candy in said assortments, procure and receive free of charge one of the said prizes hereinbefore referred to. The respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said 5-cent and 10-cent packages of hard candies are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of the chance of obtaining as a prize one of the 5-cent packages of candy or the 10-cent package of candy.

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

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, Advance Candy Co., Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondent entered its appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission whereby it was admitted that the facts set forth in the said complaint, Docket No. 1792, as to respondent's methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United

States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of sale of candy identical with or similar to those used by the respondent herein, the Federal Trade Commission might without further proceedings of any kind, or notice to respondent, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondent herein to be unfair methods of competition, and issue its order requiring said respondent to cease and desist from such unfair methods of competition, and said respondent agreed to be bound by and obey said order to cease and desist. It was further agreed that said respondent admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondent to the charges of said complaint in lieu of any other answer to be filed by said respondent. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondent herein to be unfair methods of competition. [291 U. S. 304.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Advance Candy Co., Inc., is a corporation organized under 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. Respondent is now, and for more than eight years last past, has been engaged in the manufacture of candy in said city and State and in the sale and distribution of said candy to wholesalers and jobbers in the State of New York and other States of the United States. It causes the said candy, when sold, to be shipped or transported from its principal place of business in the State of New York to purchasers thereof in the States of the United States other than the State of New York. In so carrying on said business respondent is and has been engaged in interstate commerce, and is and has been in active competition with other corporations, partnerships and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candies. Said assortments consist of a number of pieces of hard candy of uniform quality, size, and shape, which pieces of candy retail at the price of 1 cent each. Each of said pieces of candy is contained within a wrapper, and a small number of said pieces of candy contain a slip of paper stating that the purchaser thereof is entitled to a 5-cent package of hard candies as a prize, and at no additional charge. The said printed slip is effectively concealed from the consumer until he has removed the wrapper. The purchaser of the last piece of candy of a uniform quality, size and shape at the price of 1 cent is entitled to receive a 10-cent package of hard candies as a prize, and at no additional charge. The aforesaid purchasers of said candies who procure a piece of candy containing a slip entitling them to a prize, or who purchase the last piece of candy in said assortments, are thus to procure one of the aforementioned prizes wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of candy heretofore referred to a display card to be used by the retailer in offering said candies for sale to the public, which display card informs the prospective purchaser that the said candies are sold in accordance with the aforementioned sales plan of the respondent.

PAR. 3. The aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid display card, and sell said candies to the purchasing public according to aforesaid plan whereby the purchaser of one of the said candies containing a slip entitling him to a prize, and the purchaser of the last piece of candy in said assortments, procure and receive free of charge one of the said prizes hereinbefore referred to. The respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said 5-cent and 10-cent packages of hard candies are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof are many who sell candies at wholesale and do not offer and place in the hands of others any additional candies or other merchandise to be given to purchasers by lot or chance or otherwise. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's

said candies in preference to the candies of respondent's said competitors because of the chance of obtaining as a prize one of the 5-cent packages of candy or the 10-cent package of candy. For about eight years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondent, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondent do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondent and others using similar methods, from said competitors. The use of such methods by respondent in the sale and distribution of candy is prejudicial and injurious to the public and its competitors and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Advance Candy Co., Inc., under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute a violation of Section 5 of an

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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 stipulation entered into between the respondent and the chief counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion drawn therefrom that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Advance Candy Co., Inc., its officers, agents, representatives and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape and quality, some of which pieces of candy contain within their wrappers slips of paper or tickets stating that the purchaser thereof is entitled to a package or larger piece of candy as a prize.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend or legends, or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the

Memoranda

sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain pieces of candy in a package or assortment contain slips of paper or tickets entitling the purchaser to a package or larger piece of candy as a prize.

(b) That upon purchasing the last piece of candy in the package or assortment a package or larger piece of candy will be given as a prize.

It is further ordered, That the respondent above named within 30 days after the service upon it of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made three consent orders² involving the use of the same sort of scheme set forth in the *Advance Candy case* above, namely, sale of individually wrapped candies, with a concealed slip which entitles the chance purchaser to an additional piece of candy or article of merchandise, as a prize.

Notes of the cases referred to, together with dates on which complaints issued, follow:

Pecheur Lozenge Co., Docket 1798—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies, certain assortments described in the complaint as follows:

Said Assortments of candies are composed of a number of rolls of candy wafers of assorted flavors, together with a number of larger rolls of candy wafers of assorted flavors, the larger rolls of candy wafers to be given as prizes to purchasers of the smaller rolls of candy wafers in the following manner:

The small rolls of candy wafers are of a uniform quality and size, and are contained within a wrapper. The majority of said small rolls of candy wafers are composed wholly of wafers of solid colors, but a small number of said rolls contain a wafer having printed thereon "Luckee Fella." This "Luckee Fella" wafer is effectually concealed from the ultimate purchaser by the wrapper within which the wafers are contained. The small rolls of candy wafers of a uniform quality, size, and shape in said assortment retail at the price of 1 cent each, but the purchaser who procures one of said rolls of

² The first of said consent orders was predicated upon the reaching of a decision in a test case, as was done in the *Keppel case*, 291 U. S. 304, deciding that the sale of candy, by such lottery methods as herein involved, constitutes an unfair method of competition.

candy wafers having a "Luckee Fella" wafer therein is entitled to receive, and is to be given free of charge, one of the said larger rolls of candy wafers heretofore referred to. The purchaser of the last roll of small candy wafers in each of said assortments is entitled to receive, and is to be given free of charge, one of the said larger rolls of candy wafers. The aforesaid purchasers of said candies who procure a roll containing the "Luckee Fella" wafer, or who purchase the last small roll of wafers in said assortment, are thus to procure one of the said larger rolls of candy wafers wholly by lot or chance.

American Caramel Co., Inc., Docket 1806—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Lancaster, Pa., sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies to the public, certain packages or assortments described in the complaint as follows:

The said assortments of candies are composed of a number of pieces of candy of a uniform quality, size, and shape together with certain articles of merchandise, which articles of merchandise are to be given as prizes to purchasers of said candies in the following manner:

The said pieces of candy of uniform quality, size, and shape in said assortment retail at the price of 5 cents each, and contained within the wrapper of a small number of the said pieces of candy in said assortment are printed slips which entitle the purchaser thereof to one of the articles of merchandise heretofore referred to. The purchaser of the last piece of the aforesaid candies in each of said assortments is entitled to receive and is to be given free of charge one of the said articles of merchandise hereinbefore referred to. The aforesaid purchasers of said candies who procure a candy containing a printed slip within the wrapper thereof and the purchaser of the last piece of candy in said assortments are thus to procure one of the said articles of merchandise wholly by lot or chance.

Mells Manufacturing Co., Docket 1870.—Complaint, October 30, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesale and retail dealers and jobbers, certain packages or assortments of candies, the nature and sale of which are described in the complaint as follows:

The said assortment of candies is composed of a number of pieces of chocolate candies of uniform size, shape and quality, together with a number of pieces of caramel candy, which pieces of caramel candy are to be given as prizes to purchasers of said chocolate candies in the following manner:

The said pieces of chocolate candies are each contained within a wrapper but the respondent furnishes with each of the aforementioned assortments, when requested, a small number of paper slips having the word "Lucky" printed thereon. These printed slips are to be inserted in the wrappers of a like number of chocolate candies and distributed among the remaining chocolate candies in the assortment and when the said slips are so inserted and distributed among the assortment they are effectually concealed from the prospective purchasers by the aforesaid wrapper. The said pieces of chocolate candy of a uniform size, shape and quality in said assortment retail at the price of one cent each but the purchaser who procures one of the said candies containing one of the paper slips with the word "Lucky" printed thereon within the wrapper is entitled to receive and is to be given free of charge one of the said caramel candies heretofore referred to. The aforesaid purchaser of said candies who procures a candy containing within the wrapper thereof one of the paper slips with the word "Lucky" printed thereon is thus to procure one of the said pieces of caramel candy wholly by lot or chance.

Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in the various States of the United States and said retail dealers and retail dealers to whom the respondent sells direct expose said assortments for sale and sell said candies to the purchasing public according to the aforesaid plan whereby the purchasers of said candies containing a paper slip with the word "Lucky" printed thereon within the wrapper procure and receive free of charge one of the said caramel candies hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said pieces of caramel candy are distributed to the purchasing public wholly by lot or chance in accordance with respondent's said sales plan.

The appearances in the foregoing group of cases were as follows:

Mr. Henry C. Lank and *Mr. G. Ed. Rowland* for the Commission.

Mr. Henry H. Snelling, of Washington, D. C., for American Caramel Co., Inc.

Mr. Nathan Feldman, of New York City, for Mells Manufacturing Co.

IN THE MATTER OF
INTERNATIONAL GUM CORPORATION¹

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

Docket 1799. Complaint, Apr. 30, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of chewing gum, including assortments composed of (a) individually wrapped, penny pieces of uniform size, shape and quality, and (b) a number of larger pieces or articles of merchandise, acquisition of which larger pieces or articles as prizes was determined by the purchasers' chance selection of one of a relatively few of said penny pieces, the color of which differed from that of the majority of said pieces, or by his purchase of the last one of said penny pieces in the assortment,

Sold such assortments, together with explanatory display cards for retailer's use in advising prospective purchasers of the nature of such merchandising plan, to wholesalers and jobbers in competition with those who do not offer and place in the hands of others any additional chewing gum or other merchandise to be given to purchasers by lot, chance, or otherwise, and in competition with gum, a substantial amount of which is sold without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of gum with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase its said gum in preference to that of competitors because of the chance of obtaining certain pieces, or other merchandise, free of charge, competitors who do not sell gum so packed and assembled that it can be resold to the public by lot or chance were put to a disadvantage and trade was diverted from them to it, and others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the States in selling and distributing chewing gum by lot or chance, the industry was injured, and legitimate competition therein was restrained and impaired:

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. Henry C. Lank and *Mr. G. Ed. Rowland* 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 cre-

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

ate a Federal Trade Commission, to define its powers and duties, and for other purposes"; the Federal Trade Commission charges that International Gum Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of 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 Massachusetts, with its principal office and place of business located in the city of Watertown, State of Massachusetts. Respondent is engaged in the manufacture of chewing gum and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said product when so sold to be transported from its said principal place of business in the city of Watertown, State of Massachusetts, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of the said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of chewing gum and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of chewing gum. The said assortments of chewing gum are composed of a number of pieces of chewing gum of uniform size, shape, and quality together with a number of larger pieces of chewing gum, and/or articles of merchandise, which larger pieces of chewing gum or articles of merchandise are to be given as prizes to purchasers of said pieces of chewing gum in the following manner:

The majority of the said pieces of chewing gum in said assortments are of the same color, but a small number of said pieces of chewing gum are of a different color. All of the said pieces of chewing gum are contained within a wrapper which effectually conceals their color from the prospective purchaser. The said pieces of chewing gum of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of said pieces of chewing gum of a different color than the majority of said pieces of chewing gum are entitled to receive and are to be given free of charge one of the said larger pieces of chewing gum and/or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chewing gum of a uniform size, shape, and quality in each of said assortments is entitled to receive

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and is to be given free of charge one of the larger pieces of chewing gum or articles of merchandise heretofore referred to. The aforesaid purchasers of said chewing gum who procure a piece of chewing gum of a different color than the majority of said pieces of chewing gum and the purchaser of the last piece of chewing gum in said assortments are thus to procure one of the said larger pieces of chewing gum or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of chewing gum heretofore referred to a display card to be used by the retailer in offering said chewing gum for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored pieces of chewing gum contained in said assortments entitle the purchaser to a prize, and that by purchasing the last piece of chewing gum in said assortments the purchaser will receive one of said larger pieces of chewing gum and/or articles of merchandise free of charge.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid display card and sell said chewing gum to the purchasing public according to aforesaid plan whereby the purchaser of said chewing gum of a different color than the majority of said pieces of chewing gum contained in said assortments and the purchaser of the last piece of chewing gum in said assortments procure and receive free of charge one of the said larger pieces of chewing gum or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of chewing gum or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondents' said sales plan.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said chewing gum in preference to the chewing gum of respondent's said competitors because of the chance of obtaining certain pieces of chewing gum and/or articles of merchandise free of charge.

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

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, International Gum Corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondent entered its appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission whereby it was admitted that the facts set forth in the said complaint, Docket No. 1799, as to respondent's methods of competition in the sale and distribution of chewing gum were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of competition identical with or similar to those used by the respondent herein, the Federal Trade Commission might without further proceedings of any kind, or notice to respondent, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondent herein to be unfair methods of competition, and issue its order requiring said respondent to cease and desist from such unfair methods of competition, and said respondent agreed to be bound by and obey said order to cease and desist. It was further agreed that said respondent admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondent to the charges of said complaint in lieu of any other answer to be filed by said respondent. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondent herein to be unfair methods of competition. [291 U. S. 304.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, International Gum Corporation, is a corporation organized under the laws of the State of Massachusetts

with its principal office and place of business in the city of Watertown, State of Massachusetts. Respondent is now, and for more than five years last past, has been engaged in the manufacture of chewing gum in said city and State and in the sale and distribution of said chewing gum to wholesalers and jobbers in the State of Massachusetts and other States of the United States. It causes the said chewing gum, when sold, to be shipped or transported from its principal place of business in the State of Massachusetts to purchasers thereof in the States of the United States other than the State of Massachusetts. In so carrying on said business respondent is and has been engaged in interstate commerce, and is and has been in active competition with other corporations, partnerships and individuals engaged in the manufacture of chewing gum, and in the sale and distribution of the same in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of chewing gum. The said assortments of chewing gum are composed of a number of pieces of chewing gum of uniform size, shape, and quality, together with a number of larger pieces of chewing gum, or articles of merchandise, which larger pieces of chewing gum or articles of merchandise are to be given as prizes to purchasers of said pieces of chewing gum in the following manner:

The majority of the said pieces of chewing gum in said assortments are of the same color, but a small number of said pieces of chewing gum are of a different color. All of the said pieces of chewing gum are contained within a wrapper which effectively conceals their color from the prospective purchaser. The said pieces of chewing gum of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of said pieces of chewing gum of a different color than the majority of said pieces of chewing gum are entitled to receive and are to be given free of charge one of the said larger pieces of chewing gum or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chewing gum of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of chewing gum or articles of merchandise heretofore referred to. The aforesaid purchasers of said chewing gum who procure a piece of chewing gum of a different color than the majority of said pieces of chewing gum and the purchaser of the last piece of chewing gum in said assortments are thus to procure one of the said larger pieces of chewing gum or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of chewing gum heretofore referred to a display card to be used by the retailer in offering said chewing gum for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored pieces of chewing gum contained in said assortments entitle the purchaser to a prize, and that by purchasing the last piece of chewing gum in said assortments, the purchaser will receive one of said larger pieces of chewing gum or article of merchandise free of charge.

PAR. 3. The aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid display card and sell said chewing gum to the purchasing public according to aforesaid plan whereby the purchaser of said chewing gum of a different color than the majority of said pieces of chewing gum contained in said assortments and the purchaser of the last piece of chewing gum in said assortments procure and receive free of charge one of the said larger pieces of chewing gum or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of chewing gum or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof are many who sell chewing gum at wholesale, and who do not offer and place in the hands of others any additional chewing gum or other merchandise to be given to purchasers by lot or chance or otherwise. Respondent's aforesaid practices thus tend to, and do, induce many of the consuming public to purchase respondent's said chewing gum in preference to the chewing gum of respondent's said competitors because of the chance of obtaining certain pieces of chewing gum or other merchandise, free of charge. For about five years last past respondent has engaged in the acts and practices under the conditions and circumstances, and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of chewing gum by the retailers by the methods described herein is a sale and distribution of chewing gum by lot or chance and constitutes a lottery or gaming device. A substantial amount of chewing gum is sold by retailers without any feature of lot or chance and not as a lottery, or gaming device and the sale of chewing gum by lot or chance, as used by the re-

spondent, is in direct competition with chewing gum which is sold without any lot or chance feature, and the sale of chewing gum without a lottery or gaming feature in connection therewith is adversely affected by the sale of chewing gum with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing chewing gum as above described is morally bad and encourages gambling, especially among children; is injurious to the chewing gum industry because it results in the merchandising of a chance or lottery instead of chewing gum; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondent do not sell chewing gum so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondent and others using similar methods, from said competitors. The use of such methods by respondent in the sale and distribution of chewing gum is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the chewing gum industry.

PAR. 7. The sale and distribution of chewing gum by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the stipulation entered into between the respondent and the chief counsel for the Federal Trade Commission, and the Commission having made its

findings as to the facts and conclusion drawn therefrom that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, International Gum Corporation, its officers, agents, representatives and employees, in the manufacture, sale and distribution in interstate commerce of chewing gum, do cease and desist from—

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, chewing gum so packed and assembled that sales of such chewing gum to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of chewing gum which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the chewing gum contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of chewing gum, for sale to the public at retail, different colored pieces of chewing gum of uniform size, shape and quality, together with larger pieces of chewing gum, or articles of merchandise, which said larger pieces of chewing gum, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of chewing gum of a particular color.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of chewing gum, or separately, bearing a legend, or legends, or statements, informing the purchaser that the chewing gum is being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its chewing gum, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining by the ultimate purchaser of a piece of chewing gum of a particular color that a larger piece of chewing gum, or other article of merchandise, will be given free to said purchaser.

(b) That upon purchasing the last piece of chewing gum in the package or assortment, a larger piece of chewing gum or an article of merchandise will be given as a prize.

Memoranda

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It is further ordered, That the respondent above named within 30 days after the service upon it of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made findings and orders, based on respondent's default under the provisions of Section 3, Rule III, of the Commission's Rules of Practice, in two other cases involving the use of the same sort of scheme as set forth in the *International Gum case* above, namely, use of concealed colored pieces, chance selection of which secures the purchaser a prize in the form of a larger piece of gum or article of merchandise. Notes of such findings and orders, together with dates on which complaints issued, follow:

Rudy Chewing Gum Co., Docket 1809—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Toledo, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering the same to the public, certain packages or assortments of chewing gum, together with certain articles of merchandise, secured as prizes through the chance selection of one of a small number of said individually wrapped pieces, the color of which differs from that of the majority of such pieces, or by the purchase of the last piece in the assortment.

Harry Gutman et al., doing business as *Gutman Bros., Elk Sales Co.*, and *Sally Mint Co.*, Docket 1871—Complaint, October 31, 1930.—Respondent partners, engaged in the sale and distribution of chewing gum to wholesale dealers and jobbers, and with principal office and place of business in New York City, sell to such wholesalers and jobbers, certain packages or assortments of gum, together with a number of larger pieces of gum, or other articles of merchandise, to be given as prizes to chance purchasers of individually wrapped or boxed pieces, the color of which differs from that of the majority, or to the chance purchaser of the last piece in the assortment, and furnish to said wholesale dealers and jobbers, explanatory display cards for retailer's use in offering said assortments to the public.

The appearances in the foregoing cases were as follows:

Mr. Henry C. Lank and *Mr. G. Ed. Rowland* for the Commission.

Mr. Morris B. Moskowitz, of New York City, for Gutman Bros.

Syllabus¹IN THE MATTER OF
JOHNSON-FLUKER COMPANY¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1831. Complaint, May 12, 1930—Decision, Apr. 3, 1934*

Where a corporation engaged in the manufacture and sale of candy, including three types of assortments composed of, (1) individually wrapped bars of uniform size, shape and quality, within the wrappers of which there were concealed slips containing the figure 1¢, 2¢, or 3¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, (2) bars similarly wrapped, the concealed slips of which contained the figures 1¢, 2¢, 3¢, 4¢, or 5¢, as the case might be, as the price to be paid, determined as above set forth, and (3) chocolate covered penny candies of uniform size, shape and quality, together with a number of larger pieces of candy or articles of merchandise, acquisition of which as prizes was determined by the purchaser's chance selection of one of a relatively few of said penny pieces, the color of the enclosed, concealed centers of which differed from that of the majority, or by his purchase of the last of said penny pieces in the assortment,

Sold said assortments, together with explanatory cards for retailers' use in advising prospective purchasers of the nature of the aforesaid various merchandising plans, to wholesalers and jobbers, in competition with those who do not offer and place in the hands of others any packages or assortments of candies which may be sold and distributed, without rearrangement, by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of the candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase its candy in preference to that of competitors because of the chance of obtaining a bar for less than three cents or five cents, or certain pieces of candy or articles of merchandise free of charge, as the case might be, many competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance, were put to a disadvantage, and trade was diverted from them to it and to others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy was merchandised, retailers were provided with the means of violating the laws or public policy of many of the states in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

Complaint

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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. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.

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 Johnson-Fluker Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of 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 Georgia, with its principal office and place of business located in the city of Atlanta, State of Georgia. It is now and for more than five years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city of Atlanta, State of Georgia, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of the said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof the respondent sells to wholesalers and jobbers certain assortments of candy.

(a) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and each of said bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slip are 1¢, 2¢, or 3¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of uniform size, shape and quality at a price of 1¢, 2¢, or 3¢, the same being determined wholly by lot or chance.

(b) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape and quality and each of said bars of candy is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of a uniform size, shape and quality at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(c) Certain of said assortments of candy are composed of a number of pieces of chocolate covered candies of uniform size, shape, and quality together with a number of larger pieces of candy and/or articles of merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate covered candies in the following manner:

The majority of said chocolate covered candies in said assortments have centers of the same color but a small number of said chocolate covered candies have centers of a different color. The said candies of uniform size, shape, and quality in said assortments retail at the price of 1 cent each, but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy and/or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate covered candies of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of candy or articles of merchandise heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the last piece of candy in said assortments are thus to procure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors, because of (a) the chance of obtaining one of said bars of candy at a price of 1¢ or 2¢ rather than at the maximum price of 3¢ or (b) the chance of obtaining one of said bars of candy at 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or, (c) the chance of obtaining certain pieces of candy and/or articles of merchandise free of charge.

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

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, Johnson-Fluker Co., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondent entered its appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission whereby it was admitted that the facts set forth in the said complaint, Docket No. 1831, as to respondent's methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of sale of candy identical with or similar to those used by the respondent herein, the Federal Trade Commission might without further proceedings of any kind, or notice to respondent, make

and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondent herein to be unfair methods of competition, and issue its order requiring said respondent to cease and desist from such unfair methods of competition, and said respondent agreed to be bound by and obey said order to cease and desist.

It was further agreed that said respondent admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true, and that said stipulation might be accepted as an answer on behalf of the respondent to the charges of said complaint in lieu of any other answer to be filed by said respondent. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondent herein to be unfair methods of competition. [291 U. S. 304.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Johnson-Fluker Co., is a corporation organized under the laws of the State of Georgia, with its principal office and place of business located in the city of Atlanta, State of Georgia. Respondent is now, and for more than eight years last past, has been engaged in the manufacture of candy in said city and State and in the sale and distribution of said candy to wholesalers and jobbers in the State of Georgia and other States of the United States. It causes the said candy, when sold, to be shipped or transported from its principal place of business in the State of Georgia to purchasers thereof in the States of the United States other than the State of Georgia. In so carrying on said business respondent is and has been engaged in interstate commerce, and is and has been in active competition with other corporations, partnerships and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof the respondent sells to wholesalers and jobbers certain assortments of candy.

(a) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape and quality and each of

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said bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The prices printed on said slip are 1¢, 2¢, or 3¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of uniform size, shape and quality at a price of 1¢, 2¢, or 3¢, the same being determined wholly by lot or chance.

(b) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape and quality and each of said bars of candy is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of a uniform size, shape and quality at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(c) Certain of said assortments of candy are composed of a number of pieces of chocolate-covered candies of uniform size, shape, and quality together with a number of larger pieces of candy or articles of merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of said chocolate-covered candies in said assortments have centers of the same color but a small number of said chocolate-covered candies have centers of a different color. The said candies of uniform size, shape, and quality in said assortments retail at the price of 1 cent each, but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate-covered candies of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of candy or articles of merchandise heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the

last piece of candy in said assortments are thus to procure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 are many who sell candies at wholesale and who do not offer and place in the hands of others any packages or assortments of candies which may be sold and distributed without rearrangement by lot or chance. Respondent's aforesaid practices tend to and do induce the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of (a) the chance of obtaining one of said bars of candy at a price of 1¢ or 2¢ rather than at the maximum price of 3¢ or (b) the chance of obtaining one of said bars of candy at 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or, (c) the chance of obtaining certain pieces of candy or articles of merchandise free of charge.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondent, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy in-

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dustry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondent do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondent and others using similar methods, from said competitors. The use of such methods by respondent in the sale and distribution of candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the stipulation entered into between the respondent and the chief counsel for the Federal Trade Commission; and the Commission having made its findings as to the facts and conclusion drawn therefrom that the respondent has violated the provisions of an Act of Congress approved on 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, Johnson-Fluker Co., its officers, agents, representatives and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, pieces of candy of uniform size, shape and quality, containing within their wrappers tickets or slips of paper bearing different prices.

(4) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape and quality, having centers of different color, together with larger pieces of candy, or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

(6) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain bars of candy of uniform size, shape and quality may be obtained for a price of 1¢, 2¢, or 3¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

(b) That certain bars of candy of uniform size, shape and quality may be obtained for the price of 1¢, 2¢, 3¢, 4¢, or 5¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

(c) That upon the obtaining by the ultimate purchaser of a piece of candy with a center of a particular color that a larger piece of candy or other article of merchandise will be given free to said purchaser.

(d) That upon purchasing the last piece of candy in the package or assortment a larger piece of candy or other article of merchandise will be given as a prize.

It is further ordered, That the respondent above mentioned within 30 days after the service upon it of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made three other consent orders in cases similar to that in the *Johnson-Fluker case* above, in that they involve combinations of two or more types of schemes like those described in the cases of *Quaker City Chocolate Co.*, Docket 1773, 18 F. T. C. 269, 276, et seq., *Minter Brothers*, Docket 1785, 18 F. T. C. 287, 295, et seq., and *Advance Candy Co., Inc.*, Docket 1792, 18 F. T. C. 298, 305, et seq. Notes of such cases follow, together with the dates on which complaints issued in the respective cases:

R. E. Rodda Candy Co., Docket 1725. Complaint, November 21, 1929. Respondent manufacturer, with principal office and place of business in Lancaster, Pa., sells to wholesale dealers, together with explanatory display cards for retailer's use in offering said candies, various types of assortments, named and denominated by it—"Penny Easter Egg" and "Penny Piggy Pick", "'One to Five' M. M. Eggs", and "'101' Easter Rabbit Assortment" and "'100' Easter Rabbit Assortment." The composition and sale of said assortments are described in the complaint as follows:

"Penny Easter Egg Assortment" and "Penny Piggy Pick"—Said assortments of candies are composed of a number of chocolate covered pieces of candies of uniform size and shape, which are sold at retail at the uniform price of one cent each, together with a number of larger pieces of candy which are to be given as prizes to purchasers of said chocolate covered candies, in the following manner:

Among the aforesaid chocolate covered candies are a number having colored centers, and when said package of candies is displayed for sale to the consuming public every purchaser of aforesaid chocolate covered candies at the price of one cent each who procures one of said candies having a colored center is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. Each of said assortments of candies also contains one piece of candy which is larger than any of the others

contained in said assortments, and the purchaser of the last piece of aforesaid chocolate covered candies in each of said assortments, respectively, is entitled to receive, and is to be given free of charge, said largest piece of candy heretofore referred to. Aforesaid purchasers of said candies who procure candies having a colored center, or who purchase the last piece of candy in said assortments, are thus to procure one of said larger pieces of candy wholly by lot or chance.

“ ‘One to Five’ M. M. Eggs ”—Said assortment of candies is composed of a number of chocolate covered pieces of candy of uniform size and shape, which are sold at retail at prices of one to five cents each depending upon the particular piece of candy chosen by the purchaser, as hereinafter described.

Each piece of candy in said assortment is contained in a wrapper, and printed on the inside of said wrapper, is the price of said piece of candy, ranging from one to five cents. The purchaser of a piece of said candy pays the price which is marked on the inside of the wrapper in which said piece of candy is contained, and the price which he pays is determined by lot or chance.

“ ‘101’ Easter Rabbit Assortment,” and “ ‘100’ Easter Rabbit Assortment ”—Said assortments of candies are composed of a number of chocolate covered pieces of candy of uniform size and shape, which are sold at retail at the uniform price of five cents each, together with a number of larger pieces of candy which are to be given as prizes to purchasers of said chocolate covered candies, in the following manner:

Among aforesaid chocolate covered candies are a number having colored centers, and when said package of candy is displayed for sale to the consuming public every purchaser of aforesaid chocolate covered candies at the price of five cents each who procures one of said candies having a colored center is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. Each of said assortments of candies also contains one piece of candy which is larger than any of the others contained in said assortments, and the purchaser of the last piece of aforesaid chocolate covered candies in each of said assortments, respectively, is entitled to receive, and is to be given free of charge, said largest piece of candy heretofore referred to.

D. Goldenberg, Inc., Docket 1810—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Philadelphia, sells to wholesalers and jobbers, together with explanatory display cards for retailer’s use in offering said candies, two kinds of assortments, one of which is composed of chocolate

covered penny candies of uniform size, etc., together with a number of larger pieces and/or articles of merchandise, to be given as prizes to the chance purchaser of one of a small number of said pieces, the color of the enclosed center of which differs from that of the majority, or to the purchaser of the last of said penny pieces in such assortment, and the other of which is composed of a number of bars of uniform size, etc., within the individual wrappers of which there are concealed slips containing the figure 1¢, 2¢, or 3¢, as the price to be paid by the consumer to the retailer, depending on his chance selection.

Block Candy Co., Docket 1956—Complaint, June 5, 1931.—Respondent manufacturer, with principal office and place of business in Atlanta, sells to wholesale and retail dealers, together with explanatory display cards, two kinds of packages or assortments, one of which is composed of chocolate covered penny candies of uniform size, etc., together with a number of larger pieces and/or other articles of merchandise, acquisition of which is determined by the chance purchase of one of a relatively few of said penny candies, the color of the enclosed concealed center of which differs from that of the majority, or by the purchase of the last of said penny pieces in the particular assortment, and the other of which is composed of a number of candy bars of uniform size, etc., within the individual wrappers of which there are concealed slips containing the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the price to be paid by the consumer to the retail merchant, depending on his chance selection.

Mr. Henry C. Lank and *Mr. G. Ed. Rowland* for the Commission.

Mr. Henry H. Snelling, of Washington, D. C., for *R. E. Rodda Candy Co.*

Mr. William Ginsburgh, of Philadelphia, Pa., for *D. Goldenberg, Inc.*

Syllabus

IN THE MATTER OF
CURTISS CANDY COMPANY AND KIDD PRODUCTS
CORPORATION ¹

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

Docket 1853. Complaint, July 1, 1930—Decision, Apr. 3, 1934

Where two corporations, operating under common control and managership, and engaged in the manufacture and sale of candy, including two types of assortments composed of, (1) individually wrapped bars of uniform size, shape and quality, within the wrappers of which there were concealed slips containing the figure 1¢, 2¢, or 3¢, as the case might be, as the price to be paid by the ultimate purchaser to the retailer depending on the former's chance selection, and, (2) individually wrapped 5-cent bars of uniform size, shape and quality, within the wrappers of a few of which there was concealed a printed slip of paper advising the purchaser thereof that the particular bar was free;

Sold said assortments, together with explanatory display cards for retailers' use in advising prospective purchasers of the nature of the aforesaid merchandising plans, to wholesalers and jobbers in competition with many who do not sell candy so packed and assembled that it can be resold to the public by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of candy sold with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase said corporation's candies in preference to those of competitors because of the change of obtaining a bar for less than 3 cents, or a 5-cent piece free, many competitors who do not sell candy packed and assembled as above set forth, were put to a disadvantage and trade was diverted from such competitors to said corporations and to others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the states in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

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

Mr. Henry C. Lank and *Mr. G. Ed. Rowland* for the Commission.
Mr. Irwin N. Walker, of Chicago, Ill., for Curtiss Candy Co.,
et al.

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

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 Curtiss Candy Company and Kidd Products Corporation, hereinafter called respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Curtiss Candy Co. is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago. Respondent Kidd Products Corporation is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the city of Chicago, State of Illinois. Respondents Curtiss Candy Co. and Kidd Products Corporation have officers and directors common to each other, the said respondents are operating under a common control and managership, and maintain a joint office, and subsequently all of the shares of stock of respondent Kidd Products Corporation are owned by the respondent Curtiss Candy Co. Respondents are engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail dealers, and to jobbers located at points in the various States of the United States, and cause said products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of such business respondents are in competition with other individuals, partnerships and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof the respondents and each of them sell, to retailers, wholesalers and jobbers, certain packages or assortments of candies.

(a) One of said assortments of candies consists of a number of candy bars of uniform size, shape and quality, and each of said candy bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which said candy bar is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said

slips are 1¢, 2¢ or 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure candy bars at a price of 1¢, 2¢ or 3¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of a number of candy bars of uniform size, shape and quality, and each of said candy bars is contained within a wrapper. The said candy bars retail at the price of 5 cents each, but a small number of said bars have within the wrapper a printed slip of paper advising the purchaser thereof that the said bar is free. The said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The aforesaid purchasers of said candy bars who procure a candy bar containing one of the said printed slips thus procure the same free of charge rather than at the regular retail price of 5 cents each. The fact of whether the purchasers of said bars of candy in said assortments procure the same free of charge, or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

Respondents furnish to said wholesale and retail dealers and jobbers with each of said packages or assortments of candy heretofore referred to, display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plan above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said candy assortments to retail dealers in various States of the United States, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale together with the aforesaid display cards, and sell said candies to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondents' sales plans hereinabove set forth.

PAR. 4. Respondents' aforesaid practices thus tend to, and do induce many of the consuming public to purchase respondents' said candies in preference to candies of respondents' said competitors because of (a) the chance of obtaining one of said pieces of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or (b) the chance of obtaining one of said pieces of candy free of charge rather than at the regular price of 5 cents.

PAR. 5. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and con-

stitute 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, the Federal Trade Commission issued and served a complaint upon the respondents, Curtiss Candy Co. and Kidd Products Corporation, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondents entered their appearance and filed an answer to said complaint, and thereafter entered into a stipulation with the chief counsel of the Federal Trade Commission whereby it was admitted that the facts set forth in the said complaint, Docket No. 1853, as to respondents' methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals or the Supreme Court of the United States of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding involving practices or methods of sale of candy identical with or similar to those used by the respondents herein, the Federal Trade Commission might, without further proceedings of any kind, or notice to respondents, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondents herein to be unfair methods of competition, and issue its order requiring said respondents to cease and desist from such unfair methods of competition, and said respondents agreed to be bound by and obey said order to cease and desist.

It was further agreed that said respondents admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondents to the charges of said complaint in lieu of any other answer to be filed by said respondents. Thereafter, the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondents herein to be unfair methods of competition. [291 U. S. 304.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having

duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Curtiss Candy Company, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago. Respondent, Kidd Products Corporation is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located in the city of Chicago, State of Illinois. Respondents, Curtiss Candy Co. and Kidd Products Corporation, have officers and directors common to each other. The said respondents are operating under a common control and managership, and maintain a joint office and substantially all of the shares of stock of the respondent, Kidd Products Corporation, are owned by the respondent, Curtiss Candy Co. Respondents are engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail dealers and to jobbers located at points in the various States of the United States, and cause said products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of such business respondents are in competition with other individuals, partnerships and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof the respondents and each of them sell, to retailers, wholesalers and jobbers, certain packages or assortments of candies.

(a) One of said assortments of candies consists of a number of candy bars of uniform size, shape and quality, and each of said candy bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which said candy bar is to be sold to the consuming public. Said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, and 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure candy bars at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of a number of candy bars of uniform size, shape, and quality, and each of said candy bars is contained within a wrapper. The said candy bars retail at the price of 5 cents each, but a small number of said bars have within the wrapper a printed slip of paper advising the purchaser thereof that the said bar is free. The said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The aforesaid purchasers of said candy bars who procure a candy bar containing one of the said printed slips thus procure the same free of charge rather than at the regular retail price of 5 cents each. The fact of whether the purchasers of said bars of candy in said assortments procure the same free of charge, or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

Respondents furnish to said wholesale and retail dealers and jobbers, with each of said packages or assortments of candy heretofore referred to, display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plan above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said candy assortments to retail dealers in various States of the United States, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale, together with the aforesaid display cards, and sell said candies to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the respondents' sales plans hereinabove set forth.

PAR. 4. Among the competitors of the respondents referred to in paragraph 1 hereof are many who sell candies at wholesale and who do not offer and place in the hands of others any packages or assortments of candies which may be sold and distributed without rearrangement by lot or chance. Respondents' aforesaid practices tend to and do induce many of the consuming public to purchase respondents' said candies in preference to candies of respondents' said competitors because of (a) the chance of obtaining one of said pieces of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or (b) the chance of obtaining one of said pieces of candy free of charge rather than at the regular price of 5 cents.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot

or chance, and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondents, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondents do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondents and others using similar methods from said competitors. The use of such methods by respondents in the sale and distribution of candy is prejudicial and injurious to the public and their competitors, and has resulted in the diversion of trade to respondents from their said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondents, Curtiss Candy Co. and Kidd Products Corporation, under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce, and constitute a violation of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the stipulation

entered into between the respondents and the chief counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion drawn therefrom 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, Curtiss Candy Co. and Kidd Products Corporation, their officers, agents, representatives and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape and quality containing within their wrappers tickets bearing different prices, or bearing the word "free" or phrases containing said word.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public (a) that certain bars of candy of uniform size, shape, and quality may be obtained for a price of 1 cent, 2 cents, or 3 cents, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser, or (b) that certain bars of candy of uniform size, shape and quality may be obtained free of charge or for a price of 5 cents, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

Memoranda

It is further ordered, That the respondents above named within 30 days after the service upon them of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made three consent orders involving the use of the same sort of scheme set forth in the Curtiss Candy case above, namely, the use of a slip concealed within the individual wrapper of the piece of candy advising that the particular piece is free, or containing some legend, which, as pre-announced, has the same import, or, in one case, the use of a concealed colored center for the same purpose. Notes of such orders, together with the dates on which complaints issued in said cases, follow:

Schutter-Johnson Candy Co., Docket 1805. Complaint, May 1 1930. Respondent manufacturer, with principal office and place of business in Chicago, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies to the public, packages or assortments composed of 40 5-cent candy bars, of uniform quality, size and shape, within the individual wrappers of ten of which there is a printed slip of paper advising that the particular bar is free.

Sam Altschuler, doing business as *Rosemary Candy Co.*, Docket 1881. Complaint, November 28, 1930. Respondent manufacturer, with principal office and place of business in San Francisco, sells to wholesale and retail dealers and jobbers, together with explanatory display cards for retailer's use in offering said candy, 40 candy bars of uniform quality, size and shape, upon the under sides of the individual wrappers of which there is printed the concealed figure, 0, 1¢, 2¢, 3¢, 4¢, or 5¢, as the price, if any, to be paid by the consumer to the retailer, depending upon his chance selection.

Shapiro Candy Manufacturing Co., Inc., Docket 1918. Complaint, February 25, 1931. Respondent manufacturer, with principal office and place of business in New York City, sells to wholesale and retail dealers and jobbers, certain packages or assortments, composed of a number of chocolate-covered candy wafers of uniform size, shape and quality, together with a number of larger pieces of candy and a toy article, the composition and sale of which assortments are described in the complaint, as follows:

The majority of the said chocolate-covered candy wafers have white centers, but a small number of said chocolate-covered candy wafers have cream-colored centers, and a small number of said

chocolate-covered candy wafers have pink centers; but the color of the center of each of the said chocolate-covered candy wafers of uniform size, shape and quality is concealed from the consuming public until after the said chocolate-covered candy wafer has been purchased and broken by the consuming public.

The said assortments are distributed to the ultimate consumer in the following manner: All of the chocolate-covered candy wafers retail at the price of 1 cent each, except those having the cream-colored center. The purchaser who procures one of the chocolate-covered candy wafers having a pink center is entitled to receive, and is to be given free of charge, one of the larger pieces of candy hereinbefore referred to; the customer who procures one of the chocolate-covered candy wafers having a cream-colored center procures the said chocolate-covered candy wafer free of charge; and the purchaser of the last piece of the aforesaid chocolate-covered candy wafers is entitled to receive, and is to be given free of charge, the toy article hereinbefore referred to.

The aforesaid purchasers of said candies who procure a piece of candy having a pink center, and the purchasers who procure a piece of candy having a cream-colored center, and the purchaser of the last piece of candy in each of said assortments, are thus to procure one of the larger pieces of candy, or one of the chocolate-covered candy wafers, or the toy article, respectively, wholly by lot or chance.

The appearances in the foregoing group of cases were as follows: *Mr. Henry C. Lank* and *Mr. G. Ed. Rowland* for the Commission.

Syllabus

IN THE MATTER OF

SOL BLOCK AND SIDNEY BLUMENTHAL, INDIVIDUALLY AND AS COPARTNERS TRADING UNDER THE NAME AND STYLE OF RITTENHOUSE CANDY COMPANY¹

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

Docket 2071. Complaint, Oct. 24, 1932—Decision, Apr. 3, 1934

Where a firm engaged in the manufacture and sale of candy, including assortments composed of 20 small, 5-cent packages of candy, and 8 large bars, with which assortments there were furnished punch boards containing 150 holes, in 8 sections, for use in retailing said assortments under a plan by which the penny purchase of a punch resulting in acquisition of 1 of 20 colored balls concealed in the board, entitled the purchaser to 1 of the 5-cent packages, purchase of last punch in each of said 8 sections entitled purchaser to 1 of the 8 bars, and purchase of a punch resulting merely in acquisition of 1 of the 130 white balls secreted in the remaining holes, secured purchaser nothing further,

Sold said assortments, along with such boards upon which there were set forth the legends, "Smart money", "1 cent", "Pink ball receives 5 cent package", and "Last punch in each section receives large bar", to wholesale dealers, jobbers and retailers in competition with many who sell candy at wholesale and do not offer and place in the hands of others packages or assortments of candy to be distributed, or which may, without rearrangement, be distributed, by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase said firm's candy in preference to that of competitors because of the lottery feature connected therewith, and the chance of obtaining certain packages or bars of candy at less than the regular retail price thereof, many competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance, were put to a disadvantage and trade was diverted from them to said firm and to others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the States in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

Complaint

18 F.T.C.

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

Mr. Henry C. Lank and Mr. G. Ed. Rowland 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 Sol Block and Sidney Blumenthal, individually, and as copartners trading under the name and style of Rittenhouse Candy Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondents are copartners trading under the name and style of Rittenhouse Candy Co. with their principal office and place of business located in the city of Philadelphia, State of Pennsylvania. Respondents are engaged in the manufacture, sale, and distribution of candy and in the sale and distribution of candy specialties and punch board devices for use in the sale of their candy products. Respondents sell their products to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and cause said products when so sold to be transported from their said principal places of business in the city of Philadelphia in the State of Pennsylvania into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the selling and distribution thereof in interstate commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, the respondents sell to wholesale dealers and jobbers and to retail dealers a certain package or assortment of candies consisting of 20 small packages of candy which usually retail at the price of 5 cents each, and 8 large bars of candy, and furnishes with said package or assortment a punch board containing 150 holes and divided into 8 sections, 2 sections containing 15 holes each, and 6 sections containing 20 holes each. Into each of the holes has been inserted a small colored ball so placed and secreted in said punch board that the colored balls cannot be seen by the

customer except when they are punched from the board. One hundred thirty of the said balls are white and 20 of the said balls are pink. The said punch board bears the following legends: "Smart Money", "One Cent", "Pink Ball Receives 5¢ Package", "Last Punch in Each Section Receives Large Bar." Every customer pays 1 cent for each punch from the board and the purchasers of punches who receive one of the said pink balls are entitled to receive and are to be given free of charge one of the 5-cent packages of candy heretofore referred to. The purchasers of the last punch in each section of the board are entitled to receive and are to be given free of charge one of the large bars of candy. The purchasers receiving one of the small white balls receive only the said ball for their money. The purchasing public are thus induced and persuaded into purchasing punches from the said board in the hope that they may obtain one of the pink prize winning balls above referred to and thus obtain one of the 5-cent packages of candy as a prize. The 5-cent packages of candy and the large bars of candy contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said packages to retail dealers in various States of the United States and the said retail dealers, and the retail dealers to whom respondents sell direct, expose said candies in connection with the aforesaid punch board and sell punches to the purchasing public in accordance with the aforesaid plan, whereby the said packages and bars of candy are distributed to the purchasers of punches from said board wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of their products in accordance with the respondents' sales plan hereinbefore set forth.

PAR. 4. Respondents' aforesaid practices thus tend to and do induce many of the consuming public to purchase respondents' said candies in preference to the candies of respondents' said competitors because of the lottery feature connected therewith and because of the chance of obtaining said packages of candy or bars of candy at less than the regular retail price thereof.

PAR. 5. 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.

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, Sol Block and Sidney Blumenthal, individually and as copartners trading under the name and style of Rittenhouse Candy Co., charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Pursuant to the provisions of said act the Commission served its complaint upon the respondents on October 25, 1932, with notice of hearing on December 2, 1930, on the charges set forth in the complaint, together with a copy of the rules of practice adopted by the Commission providing for the time within which answer is required to be made by a respondent after service of a complaint, and for failure of respondent to appear or to file answer thereto. At the time of serving the complaint on the respondents the Commission notified the said respondents that the matter had been placed on the suspense calendar, and that they would not be required to file answer thereto or appear for hearing until further action by the Commission. Thereafter, on February 13, 1934, an order was entered by the Commission wherein it was ordered that the complaint be removed from the suspense calendar and it was further ordered that the respondents file their answer to the complaint herein on or before March 14, 1934, otherwise the matter would be proceeded with as in default. A copy of this order was served on the respondents on February 15, 1934.

The time of the respondents to appear and file answer to the complaint in accordance with the order of the Commission expired on March 14, 1934, and the respondents having failed to file answer to the complaint, and no extension of time to answer having been requested or granted, and the respondents being in the default for want of appearance and answer, in accordance with the provisions of Section 3, Rule III, of the Rules of Practice of the Commission, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Sol Block and Sidney Blumenthal, are copartners trading under the name and style of Rittenhouse

Candy Co. with their principal office and place of business in the city of Philadelphia, State of Pennsylvania. Respondents are now and for more than four years last past have been engaged in the manufacture of candy in said city and State, and in the sale and distribution of said candy to wholesalers and jobbers in the State of Pennsylvania and other States of the United States. They cause the said candy, when sold, to be shipped or transported from their principal place of business in the State of Pennsylvania to purchasers thereof in the States of the United States other than the State of Pennsylvania. In so carrying on said business respondents are and have been engaged in interstate commerce, and are and have been in active competition with other corporations, partnerships and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, the respondents sell to wholesale dealers and jobbers and to retail dealers a certain package or assortment of candies consisting of 20 small packages of candy which usually retail at the price of 5 cents each, and 8 large bars of candy, and furnish with said package or assortment a punch board containing 150 holes and divided into 8 sections, 2 sections containing 15 holes each, and 6 sections containing 20 holes each. Into each of the holes has been inserted a small colored ball so placed and secreted in said punch board that the colored balls cannot be seen by the customer except when they are punched from the board. One hundred thirty of the said balls are white, and 20 of the said balls are pink. The said punch board bears the following legends: "Smart Money", "One Cent", "Pink Ball Receives 5¢ Package", "Last Punch in Each Section Receives Large Bar." Every customer pays 1 cent for each punch from the board, and the purchasers of punches who receive one of the said pink balls are entitled to receive and are to be given free of charge one of the 5-cent packages of candy heretofore referred to. The purchasers of the last punch in each section of the board are entitled to receive and are to be given free of charge one of the large bars of candy. The purchasers receiving one of the small white balls receive only the said ball for their money. The purchasing public are thus induced and persuaded into purchasing punches from the said board in the hope that they may obtain one of the pink prize winning balls above referred to and thus obtain one of the 5-cent packages of candy as a prize. The 5-cent packages of candy and the large bars of candy contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said packages to retail dealers in various States of the United States and the said retail dealers, and the retail dealers to whom respondents sell direct, expose said candies in connection with the aforesaid punch board and sell punches to the purchasing public in accordance with the aforesaid plan, whereby the said packages and bars of candy are distributed to the purchasers of punches from said board wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of their products in accordance with the respondents' sales plan hereinbefore set forth.

PAR. 4. Among the competitors of respondents referred to in paragraph 1 hereof are many who sell candy at wholesale and who do not offer and place in the hands of others packages or assortments of candy which are to be distributed, or which may without rearrangement be distributed, by lot or chance. Respondents' aforesaid practices tend to and do induce many of the consuming public to purchase respondents' said candies in preference to the candies of respondents' said competitors because of the lottery feature in connection therewith, and because of the chance of obtaining certain packages or bars of candy at less than the regular retail price thereof. For about four years last past the respondents have engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery, or gaming device, and the sale of candy by lot or chance, as used by the respondent, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondents do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a dis-

advantage in competing, and that trade is diverted to respondents and others using similar methods, from said competitors. The use of such methods by respondents in the sale and distribution of candy is prejudicial and injurious to the public and their competitors, and has resulted in the diversion of trade to respondents from their said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondents, Sol Block and Sidney Blumenthal, copartners trading under the name and style of Rittenhouse Candy Co., under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard 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 respondents, Sol Block and Sidney Blumenthal, individually and as copartners, trading under the name of Rittenhouse Candy Co., their agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages, or assortments of candy which

are used without alteration or rearrangements of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling assortments of candy for sale to the public at retail, and including in said assortments punch boards, which said assortments of candy are so packed and arranged that the candies therein may be without rearrangement distributed by means of the said punch boards.

(4) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, punch boards to be used in connection with the sale of respondents' candy.

(5) Supplying to or placing in the hands of wholesale dealers, jobbers and retail dealers, punch boards, or other lottery or gaming devices, for the purpose of enabling retail dealers to resell respondents' candy to the consuming public by means of said punch boards, or other lottery or gaming devices.

(6) Furnishing to wholesale dealers, jobbers and retail dealers, punch boards or other printed matter for use in connection with the sale of their candy or candy products, which said punch boards or other advertising literature inform the purchasers and purchasing public that certain small packages of candy, or certain bars of candy, will be distributed to purchasers, depending upon the color of the ball received when operating the punch board.

It is further ordered, That the respondents above named within 30 days after the service upon them of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDUM

The Commission as of the same date made a consent order involving the use of the same sort of a scheme set forth in the *Rittenhouse Candy* case above, namely, the use of a punch board for the sale of the particular assortment involved. Descriptive note of said case, together with the date on which complaint issued, follows:

Cosmopolitan Candy Co., Docket 1858. Complaint, July 11, 1930. Respondent manufacturer, with principal office and place of business in Chicago, as set forth in the complaint, "sells to wholesalers and jobbers a certain package or assortment of candies, consisting of 15 hand decorated M. M. eggs; 6 fruit and nut in cream chocolate half-pound eggs hand decorated; 4 fruit nut in cream chocolate 1-pound eggs, hand decorated; 1 large 3-pound hollow egg chocolate,

hand decorated, and furnishes with said package or assortment a punch-board containing 200 holes, divided into 4 sections. Into each of the holes has been inserted a small slip of paper bearing a printed number. The printed slips bear numbers from 1 to 200 inclusive, and are so placed and secreted in said punch-board that they cannot be seen by the customer except when they are punched from the board."

The board bears the following legends: "5 cents per sale. Easter greeting. Decorated Easter eggs. Nos. 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150 receive 15-cent M. M. egg. No. 160, 170, 175, 180, 190, 200 receive 50-cent chocolate egg. Last punch in each section receives \$1 chocolate egg. Last punch on board receives \$3 big egg."

Every customer pays 5 cents for each punch from the board and the purchasers of punches who receive numbers other than those above enumerated or who do not qualify by purchasing the last punch in each section or by purchasing the last punch on the board receive nothing for their money. The purchasing public are thus induced and persuaded into purchasing punches from the said board in the hope that they may obtain one of the prize winning numbers above referred to and thus obtain one of the prizes called for by the said numbers. The Easter eggs contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

Aforesaid wholesale dealers of respondent resell said packages to retail dealers in various States of the United States, and said retail dealers expose said candies in connection with the aforesaid punch-board and sell punches to the purchasing public in accordance with the aforesaid plan, whereby the said candy Easter eggs are distributed to the purchasers of punches from said board wholly by lot or chance. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of its products in accordance with the respondent's sales plan hereinabove set forth.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Rappaport & Rappaport, of Chicago, Ill., for respondent.

IN THE MATTER OF

BENJAMIN D. RITHOLZ, ET AL., AS INDIVIDUALS AND AS COPARTNERS, TRADING AS INTERNATIONAL OPTICAL CO., ETC.; DR. RITHOLZ AND SONS, INC., ALSO TRADING AS INTERNATIONAL OPTICAL CO., ETC.; AND MORRIS I. RITHOLZ, ET AL., AS INDIVIDUALS AND AS STOCKHOLDERS OF DR. RITHOLZ & SONS, INC., AND ALSO TRADING AS INTERNATIONAL OPTICAL CO., ETC.

COMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2069. Complaint, July 13, 1933¹—Decision, Apr. 6, 1934

Where a firm engaged under various trade names in the manufacture and sale of spectacles, spectacle frames and lenses for spectacles; the corporate successor of said firm (four of the five stockholders of which corporation were composed of former partners thereof), engaged both in its own corporate name and under various trade names in carrying on the business theretofore conducted by said firm; and the aforesaid stockholders, engaged in their individual capacity in carrying on under the trade names employed by said corporation, and under other trade names, the business of manufacturing and selling spectacles, spectacle frames and lenses for spectacles in commerce among the various States;

- (a) Variously represented through circulars and advertisements that they furnished their said spectacles free or without cost to purchasers and prospective purchasers, or free without a cent of cost, through statements advising prospective customers to write them for their "free offer", and setting forth that the company was "offering five thousand more sample pairs free" of their new kind of guaranteed spectacles and inviting the prospect to write in for their "free offer", the facts being they did not furnish their spectacles free to customers, as represented, but either required the purchaser wishing to take advantage of the supposed free offer, to make an initial payment, following which they sent the spectacles C. O. D., or required him to sell a certain number, with a pair for himself as compensation, and did not refund the purchase price to those dissatisfied, notwithstanding their guarantee so to do;
- (b) Variously represented through circulars and/or advertisements that their so-called "Marvel Eye Tester" for the use of customers and prospective customers for self-testing, had been "endorsed by the world's most famous eye specialists and eye hospitals", afforded tests, according to a "Washington scientist", "better than optometrists'", had been found "scientific and practical for testing eyes" by "one of the most leading professors of ophthalmology in the world", and had been endorsed by "the world's largest eye hospital", and that through use thereof "you will be able to furnish better glasses by mail than the average optometrist can in his own

¹ Supplemental and amended.

office," and made numerous other representations and statements of similar tenor, the facts being that said various statements and representations were false and without any basis or foundation in fact, the lenses in the device in question, and a substantial number of those in the spectacles made and sold by them, were ground from window glass instead of crown glass, from which alone satisfactory lenses for spectacles and optical instruments can be ground, and use of spectacles obtained through the use of said device is injurious to the wearer thereof, and gravely endangers his sight; and

- (c) Various published and used in their circulars and advertising matter copies of purported letters from specialists, together with pretended photographs thereof, upon purported reproductions of letterheads displaying names of well known institutions, and places, endorsing the scientific merit and value of said tester, facts being said pretended reproductions and photographs were not authentic, and said pretended communications were false and unjustified and the supposed specialist signers thereof had given neither such, nor any other, endorsements of the aforesaid device, but had only, at the most, in one or two cases, written one of the individuals herein concerned respecting an entirely different instrument;

With capacity and tendency, (a) to mislead and deceive dealers and the purchasing public into believing that, (1) they would be furnished free of cost, spectacles, lenses and spectacle frames, as aforesaid, and, (2) that through use of said device, self-examination of eyes could be successfully accomplished, and proper lenses prescribed, and, (3) that the statements in said fictitious testimonials were true and actually made by the persons purporting to have made them, and, (b) to induce purchase from said firm, corporation or individuals, of the products in question in reliance upon the aforesaid erroneous beliefs, and divert trade to them from competitors, including those who do not make such representations in connection with the sale or offer of their own products, and with result that substantial competition in said products throughout the various States was by them substantially injured:

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. Edward L. Smith for the Commission.

Mr. John A. Nash and *Mr. Aaron Soble*, 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 respondents Benjamin D. Ritholz et al., individually and as co-partners, trading as International Optical Co., and under other trade names, and engaged for more than three years immediately prior to April 1, 1931, in the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce among the States, and with principal office and branches, in

Chicago; respondent, Dr. Ritholz & Sons, Inc., an Illinois corporation, organized on or about April 1, 1931, and, since said date, successor to and conductor of, the business immediately before referred to, and also trading as International Optical Co. and under various other trade names; and Maurice I., F. J., Ante, Samuel J., and F. Ritholz, as individuals and as stockholders of the aforesaid corporation (also trading, individually, as International Optical Co., etc.)² with filling orders with other than product advertised, and with advertising falsely or misleadingly as to free product and endorsements and testimonials, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent partners, respondent corporation, and respondent stockholders thereof, as charged, engaged as aforesaid, in competition with others similarly engaged, advertised in circulars sent through the mails, and in newspapers, magazines and periodicals of general circulation throughout the United States, to sell to the purchasing public a certain well known kind and make of spectacles, frame and lenses made by competitors, notwithstanding which they delivered to purchasers ordering such product, in response to said advertisements, spectacles, frames and lenses of different kinds and makes, and of inferior quality.

Said respondents further, as charged, falsely represented in their said advertising that they would furnish their said spectacles, free, without cost to purchasers and prospective purchasers thereof, or free without a cent of cost, and likewise falsely represented that their said "system" had been endorsed by the world's most famous specialists and eye hospitals, and that their device or tester for self-examination of the eyes had likewise been endorsed as scientific and practicable by leading specialists and institutions having to do with the field concerned,³ the facts being that no one could furnish, as claimed, through said device better glasses by mail than the average optometrist could prescribe in his own office, and no such endorsements had been given.

Said various respondents, further, as charged, published purported letters from optometrists and physicians, endorsing the use of the aforesaid device, notwithstanding fact that said testimonials were fictitious and were never furnished by the persons named.

² The various respondents and the trade names used by them are set forth more fully in the findings, *infra*, at page 351.

³ The statements made, as alleged in the complaint, may be found set forth in the findings, *infra*, at pp. 358, 380, 381.

Said representations, advertisements and statements, and their use, as charged, had and (in the case of respondent corporation and stockholders) have the capacity and tendency to mislead and deceive the purchasing public into the belief that, (1) in purchasing aforesaid products from respondents, they are purchasing the products of the manufacturers, as represented, (2) customers will be furnished said products free of cost, (3) through use of said tester, eyes can be successfully self-examined by customers, and proper lenses prescribed, and that, (4) statements in the testimonials in question were true and actually made by the persons purporting to have made them, and to induce said public and dealers to purchase said products in such erroneous beliefs, and divert trade from competitors, who, as manufacturers and dealers, do not make such misrepresentations; to the substantial injury of a substantial competition throughout the States, and 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 July 13, 1933, issued and served its supplemental and amended complaint in this proceeding against respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz, as individuals and as co-partners trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names; Dr. Ritholz & Sons, Inc., a corporation also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, and the said Morris I. Ritholz, F. J. Ritholz, Ante Ritholz, Samuel J. Ritholz, and F. Ritholz, as individuals and as stockholders of said Dr. Ritholz & Sons, Inc., and also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names.

After the issuance of the said supplemental and amended complaint, and the filing of respondent's answer thereto, testimony and evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for

final hearing before the Commission on the supplemental and amended complaint, the answer thereto filed by the respondents, testimony and evidence, and a stipulation entered into on May 27, 1933, between the attorney for the aforesaid respondents and the chief counsel of the Federal Trade Commission, by which it was agreed that in the trial of the proceeding the Commission was able to produce as witnesses in numerous other cities of the United States, numerous other optometrists, ophthalmologists and other scientists who would, if called as witnesses, testify in the same substance as to scientific matters as Dr. Pine, Dr. Sheppard and Dr. Huizinga had already testified in the proceeding, and briefs of counsel for the Commission and counsel for the respondents (but without oral argument, counsel for the respondents having waived oral argument), and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz were for more than three years until April 1, 1931, or thereabouts, copartners, doing business under the trade names, International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, with their principal office and place of business and branches thereof located in the city of Chicago, State of Illinois. Until approximately April 1, 1931, they had been for more than three years immediately prior thereto engaged, under the trade names hereinbefore mentioned and under various other trade names, in the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce between and among the various States of the United States. While doing business under said trade names and under various other trade names, they caused their products, when sold by them, to be shipped from their principal place of business and branches thereof in the city of Chicago, aforesaid, into and through other States of the United States to the purchasers thereof located in such States, other than the State of Illinois. In the course and conduct of said business they were in substantial competition with other partnerships and with individuals and corporations engaged in the sale and distribution of spectacles, spec-

tacle frames and lenses for spectacles, in commerce in various States of the United States and between and among the various States of the United States.

PAR. 2. Respondent, Dr. Ritholz & Sons, Inc., is a corporation organized on or about April 1, 1931, under and by virtue of the laws of the State of Illinois, with its principal office and place of business and branches thereof located in the city of Chicago, State of Illinois. The said respondent, Dr. Ritholz & Sons, Inc., upon its organization acquired and has since continued the business which prior thereto had been conducted by the respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz, as described in paragraph 1 hereof. The said Dr. Ritholz & Sons., Inc., since April 1, 1931, or thereabouts, has been engaged in the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce between and among the various States of the United States. It causes and has caused said product, when sold by it, to be shipped from its principal place of business and branches thereof in the city of Chicago, aforesaid, into and through States of the United States other than the State of Illinois, to the purchasers thereof located in such States. In the course and conduct of its said business it is now, and has been at all times since its incorporation, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of spectacles, spectacle frames and lenses for spectacles, in commerce in various States of the United States and between and among various States of the United States. Its stockholders since its organization have been and still are the Respondents Morris I. Ritholz, F. J. Ritholz, Ante Ritholz, Samuel J. Ritholz and F. Ritholz.

In addition to conducting its business described herein under its corporate name, said Dr. Ritholz & Sons., Inc., now trades, and ever since its incorporation has traded, also under the names, International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co. Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, which other trade names have been used and still are being used also by the aforesaid respondent stockholders of said Dr. Ritholz & Sons, Inc., in the operation between and among the several States of the United States of a business and/or businesses consisting of the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce between and among the various States of the United States. The said respondent corporation trading under the aforesaid trade names and

the said stockholders of the said corporation also trading under said various trade names cause and have caused said products, when sold by them, to be shipped from their principal place of business and branches thereof in said city of Chicago, into and through other States of the United States, to the purchasers thereof located in such States other than the State of Illinois. In the course and conduct of their said business they are and have been since April 1, 1931, or thereabouts, in substantial competition with partnerships, individuals and corporations engaged in the sale and distribution of spectacles, spectacle frames and lenses for spectacles, in commerce in various States of the United States and between and among the various States of the United States.

PAR. 3. In the course and conduct of their business as described in paragraph 1 hereof, the respondents mentioned in said paragraph 1, for more than three years immediately prior to April 1, 1931, sold and distributed their products to dealers therein and directly to the purchasing public, generally through the use of and by means of the United States mails. And in the course and conduct of their business as described in paragraph 2 hereof, respondents mentioned in said paragraph 2 sell and distribute, and since April 1, 1931, have sold and distributed their products to dealers therein and directly to the purchasing public, generally through the use of and by means of the United States mails. In promoting the sale of their products the respondents named in paragraph 1 hereof advertised until April 1, 1931, or thereabouts, through and by means of circulars transmitted by them through the mails and in newspapers, magazines and periodicals of general circulation throughout the United States. The respondents named in paragraph 2 hereof, in promoting the sale of their products advertise, and have advertised through and by means of circulars transmitted by them through the mails and in newspapers, magazines, and periodicals of general circulation throughout the United States.

PAR. 4. There is in the record no proof that the respondents herein sold their products as the products of any other company except the Shuron Optical Co., Inc.

On May 10, 1932, in the United States District Court, Northern District of Illinois, Eastern Division, in a suit in equity brought by said Shuron Optical Co., Inc., plaintiff, against respondents herein, Dr. Ritholz & Sons, Inc., a corporation; Morris I. Ritholz, Samuel J. Ritholz; Mrs. Ante Ritholz, and Benjamin D. Ritholz, as individuals; and said corporation and said individuals trading as Capitol

Spectacle Co., defendants, the following decree and injunction was entered:

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

SHURON OPTICAL COMPANY, INC., PLAINTIFF

v.

DR. RITHOLZ & SONS, INC., A CORPORATION; MORRIS I. RITHOLZ, SAMUEL J. RITHOLZ; MRS. ANTE RITHOLZ, AND BENJAMIN D. RITHOLZ, AS INDIVIDUALS; SAID CORPORATION AND SAID INDIVIDUALS TRADING AS CAPITOL SPECTACLE COMPANY, DEFENDANTS } In Equity No. 11,426

FINAL DECREE AND INJUNCTION

This cause came on to be heard this day, and thereupon, on motion of Wilkinson, Huxley, Byron & Knight, solicitors and of counsel for the above-named plaintiff and consent thereto by the solicitor and counsel for the above-named defendants, it is—

Ordered, adjudged and decreed as follows:

1. Plaintiff and its predecessors in business have for many years past, and plaintiff now is, engaged in the manufacture and sale, in Interstate Commerce, of eyeglass frames and spectacles, lenses for the same, and various optical instruments and appliances, using for the identification of such manufactures the arbitrary name "Shur-On", and have extensively advertised at large expense and thereby built up a large and lucrative interstate trade in manufactures so identified.

2. Defendant corporation, Dr. Ritholz & Sons, Inc., and the defendants, Morris I. Ritholz, Samuel J. Ritholz, Mrs. Ante Ritholz, and Benjamin D. Ritholz, as individuals, copartners or in other business relationships, and under various trade names, have, prior to the commencement of this suit, in the city of Chicago and elsewhere, and in Interstate Commerce, without the license or allowance of the plaintiff and in violation of the good will of the plaintiff, used plaintiff's trade-mark and trade-name "Shur-On" in association with eyeglasses, eyeglass frames, lenses or other optical goods not made by the plaintiff, both in advertising such goods and offering such goods for sale, and such use of plaintiff's trade-mark and trade-name is calculated to cause confusion in the mind of the purchasing public and lead to the purchase of defendant's said manufactures in lieu of plaintiff's manufactures.

3. That an injunction issue out of and under the seal of this Court, directed to the said defendants, Dr. Ritholz & Sons, Inc., a corporation, Morris I. Ritholz, Samuel J. Ritholz, Mrs. Ante Ritholz, and Benjamin D. Ritholz as individuals, also to said corporation and individuals trading as Capitol Spectacle Co., and each of them, their associates, attorneys, solicitors, clerks, servants, agents, and workmen, enjoining and restraining them, and each of them, without the license of plaintiff, from associating the name "Shur-On" with any eyeglasses, eyeglass frames, lenses or other optical goods not made by plaintiff, either in the advertisement of such goods, the offering of the same for sale, or in any manner using said trade-mark or trade-name to advertise the goods of defendants.

Findings

18 F.T.C.

4. The parties hereto having settled all matters of controversy between them as to damages and profits, no damages or profits shall be recovered by plaintiff from defendants or any of them; and each party shall pay its own costs.

JAMES H. WILKERSON,
U. S. District Judge.

The above-named defendants hereby consent to the entry of the foregoing decree.

JOHN A. NASH,
Solicitor for Defendants.

CHICAGO, ILLINOIS, *May 10, 1932.*

In the bill of complaint in the said proceeding in which the foregoing decree was entered the plaintiff, the said Shuron Optical Co., Inc., complained against the defendants therein that said defendants well knowing the rights of the plaintiff in the trade-mark "Shur-On", in connection with the manufacture and sale of eyeglasses, spectacle frames, and mountings, and contriving to injure it and to injure and impose on the public did, against the will of the plaintiff, unlawfully and wrongfully advertise in newspapers and other publications of general circulation and in circulars sent through the mails, "Shur-On" glasses, which were not the products of the plaintiff and did unlawfully and wrongfully supply in interstate commerce persons offering to buy from the defendants eyeglasses or spectacle frames or mountings not manufactured or sold by the plaintiff under such circumstances that the origin or source of the said articles so sold was not apparent to the purchasers and without disclosing to the purchasers that said articles sold by defendants were not genuine "Shur-On" articles but on the contrary were eyeglasses or spectacle frames or mountings of other manufacture.

PAR. 5. In the course and conduct of their business hereinbefore described, the Respondents mentioned in paragraph 1 hereof, for more than three years immediately prior to April 1, 1931, or thereabouts, represented, and the respondents named in paragraph 2 hereof, since April 1, 1931, have represented, in their circulars and advertisements to furnish to prospective users of spectacles, such spectacles free without cost to such purchasers and prospective purchasers or free without a cent of cost, when in truth and in fact such spectacles were not furnished by said respondents free, or free without cost, or free without a cent of cost. Among such advertisements is the following published in the November 20, 1930, issue of the Camden (Ark.) News:

NEW KIND OF SPECTACLES

5,000 SAMPLE PAIRS OFFERED FREE

Chicago, Ill.—A new spectacle has been produced which is guaranteed against breaking or tarnishing and is a great improvement over other makes. They

will enable almost anyone to read the very smallest print, thread the finest needle and see far or near. Hundreds of thousands have been ordered in the last few months. Orders are pouring in from all over the world. Shur-Fit Optical Co., Suite R-51, 1014 W. Congress Street, Chicago, Ill., are offering 5,000 more sample pairs free. Just write for their free offer giving your name, age and address. They will also tell you how you can get their agency and without experience or money make from \$250 to \$500 a month.

Another of such advertisements is the following published in the December 30, 1930, issue of the Bloomington (Ind.), World:

NEW KIND OF SPECTACLES FREE

The Shur-Fit Optical Co., Suite P-134, 1014 W. Congress Street, Chicago, Ill., have produced a new kind of spectacle guaranteed against breaking and tarnishing, that enables anyone to read the smallest print and to see far or near. People everywhere are enthusiastically praising them. This company is offering 5,000 more sample pairs free. Just write them for their free offer giving your name, age and address. They will also tell you how you can get their agency and without experience or money make \$250 to \$500 a month.

Others were in the form of letters used by the respondents named in paragraph 1 and in paragraph 2 hereof. Neither the respondents named in paragraph 1 hereof nor the respondents named in paragraph 2 hereof furnished spectacles free to its customers as represented by them. Respondents named in paragraph 1 hereof and respondents named in paragraph 2 hereof, required prospective purchasers when they wished to take advantage of the offer of free spectacles, to make an initial payment before the spectacles would be sent, whereupon the spectacles would be sent to the purchaser C. O. D., or to sell a certain number of spectacles for which they would receive as compensation a pair of spectacles for themselves.

And in selling spectacles respondents named in paragraph 1 hereof and respondents named in paragraph 2 hereof sold them under the guarantee that if they were not satisfactory to the customer, upon return of the spectacles the purchase price would be refunded. The said respondents made it a practice not to abide by such guarantees and in a proceeding begun by the United States Post Office Department it was claimed that there were 7,000 cases in which, while the respondents guaranteed to refund the purchase price of spectacles purchased from them, they did not do so.

PAR. 6. In connection with, and as a part of their business between the various States of the United States, as hereinbefore described, respondents named in paragraph 1 hereof for more than three years until April 1, 1931, or thereabouts, sent to their customers and their prospective customers, a device called and designated by said respondents "Marvel Eye Tester". Of this device

the said respondents mentioned in paragraph 1 hereof in their advertisements and circulars stated, among other things:

My system has been endorsed by the world's most famous eye specialists and eye hospital;

Washington scientist claims test with my instrument better than by optometrist;

One of the most leading professors of ophthalmology in the world finds my testing device scientific and practical for testing eyes;

World's largest eye hospital endorses my testing instrument;

By its use you will be able to furnish better glasses by mail than the average optometrist can in his own office.

When in truth and in fact the aforesaid eye-testing device has not been endorsed by any eye specialist or by any eye hospital and when in truth and in fact no Washington scientist has claimed that tests with the so-called device of the respondents are better than tests of eyesight by optometrists; and when in truth and in fact no professor of ophthalmology has found the said device scientific and practical for testing eyes; and when in truth and in fact neither the world's largest eye hospital nor any hospital has endorsed the said testing device; and when in truth and in fact no one can by the use of the said testing device will be able to furnish better glasses by mail than the average optometrist can prescribe in his own office. The said testing devices were designed by an employee of the respondents who had only a limited education and who had no scientific training.

The specialists represented by the said respondents as having endorsed the said respondent's system are Dr. Huizinga of Grand Rapids, Mich., and Dr. H. G. Walters, of Washington, D. C. None of these has endorsed the said system.

The Washington scientist represented in said advertisements to claim that tests with the said Marvel Eye Tester are better than by optometrists, is the said Dr. H. G. Walters, who does not make such claim and who never has made such claim.

The professor of ophthalmology represented in said advertisements to have stated that he finds the said testing device scientific and practical for testing eyes, is the said Dr. Huizinga, who never so found.

The eye hospital represented in said advertisements as endorsing the said testing instruments, is the Chicago Eye, Ear, Nose & Throat Hospital. Said hospital never has endorsed the said testing instrument.

The specialist who is represented in the said advertisements as claiming that by the use of the said Marvel Eye Tester the respond-

ents would be able to furnish better glasses by mail than the average optometrist can in his own office, is the said Dr. H. G. Walters. He has never made such a statement.

By the use of said Marvel Eye Tester satisfactory glasses cannot be furnished to purchasers. On the other hand the use of spectacles obtained through the use of said Marvel Eye Tester is injurious to the wearer of such spectacles and he is in grave danger, by using such spectacles, of losing his eyesight entirely. Satisfactory lenses for spectacles and optical instruments can be ground only from crown glass. Reputable manufacturers of lenses for spectacles and for optical instruments grind such lenses only from crown glass. Satisfactory lenses for spectacles and for optical instruments cannot be ground from window glass. All of the lenses used in said respondents' so-called "Marvel Eye Tester" and a substantial number of the lenses in spectacles manufactured and sold by the said respondents were ground from window glass.

PAR. 7. In connection with and as a part of their business between the various States of the United States as hereinbefore described, respondents named in paragraph 2 hereof since April 1, 1931, until July 1, 1933, or thereabouts, which was after the issuance of the original complaint in this proceeding and about the time of the issuance of the supplemental and amended complaint in this proceeding, sent to their customers and their prospective customers the same device described in paragraph 6 hereof and called "Marvel Eye Tester". Of this device the said respondents mentioned in paragraph 2 hereof in their advertisements and circulars made the same representations as set out in paragraph 6 hereof. Satisfactory lenses for spectacles and optical instruments can be ground only from crown glass. Reputable manufacturers of lenses for spectacles and for optical instruments grind such lenses only from crown glass. Satisfactory lenses for spectacles and for optical instruments cannot be ground from window glass. All of the lenses used in said respondents' so-called "Marvel Eye Tester" and a substantial number of the lenses in spectacles manufactured and sold by the said respondents were ground from window glass.

PAR. 8. In connection with the sale by the respondents mentioned in paragraph 1 hereof, and with their offering for sale their said spectacles, lenses and spectacle frames, said respondents for approximately three years, until April 1, 1931, or thereabouts, published purported testimonial letters from optometrists and physicians endorsing the use of the device mentioned in paragraph 6 hereof, which said purported testimonials are fictitious and were never furnished by the persons represented by said respondents as having written

such testimonials. One of such letters is the following upon the purported letterhead of the Chicago Eye, Ear, Nose & Throat College, which is affiliated with the Chicago Eye, Ear, Nose & Throat Hospital, which said fictitious letter reads as follows:

I find that your instrument is based upon established optical laws governing the construction of all optical instruments.

Your instrument is very interesting and very ingenious and should fulfill the purpose for which it was designed and built.

DR. NUGENT.

The reproduction of the letterhead of the Chicago Eye, Ear, Nose & Throat College in the aforesaid fictitious letter, is not a reproduction of the genuine letterhead of that institution. The substance of the said fictitious letter is a reproduction made by the respondents of a part of a letter dated August 11, 1928, by Dr. O. B. Nugent on the letterhead of the Chicago Eye, Ear, Nose & Throat College addressed to Mr. B. D. Ritholz, % the National Watch & Jewelry Co., 1445 Jackson Boulevard, Chicago. The remainder of the letter written by the said Dr. Nugent on August 11, 1928, reads as follows:

The instrument you handed to me, which you designate as the "Ritholz Refractometer" invented and designed by Prof. H. G. Huizinga, of Grand Rapids, Mich., has been carefully examined by me.

The Ritholz Refractometer mentioned in the said letter of Dr. Nugent dated August 11, 1928, is an altogether different instrument from the said "Marvel Eye Tester" and is an instrument designed for use by an optometrist, oculist, or ophthalmologist for examining the eyes of a patient and is not an instrument to be used by a person for testing his own eyes. This instrument, the Ritholz Refractometer, is one of numerous instruments used by optometrists, oculists, and ophthalmologists in connection with the examination of a patient's eyes for the purpose of fitting him with spectacles. The facsimile of Dr. Nugent's signature on the said purported letter is not a true facsimile. The facsimile of the letterhead is not true. The facsimile of the picture of the building on the purported letter is not true. The facsimile of the arrangement of the letterhead on the said purported letter is not true. The telephone number given in the said facsimile is not true. The names of members of the faculty of the Chicago Eye, Ear, Nose & Throat College used on its genuine letterhead are not shown on the purported letterhead of the said purported letter.

Another of such purported testimonial letters is the following upon the purported letterhead of Dr. Huizinga, which said fictitious letter is as follows:

Dr. HUIZINGA
Practice Limited
Eye, Ear, Nose and Throat
1407 Grand Rapids National Bank Bldg.,
GRAND RAPIDS, MICHIGAN

I consider this instrument entirely of practical value in testing the eyes, and based upon well known and long established scientific principles. The Calibrations on this machine have been very carefully checked and verified. This device has been found to be in every way practical for use in testing eyes.

Dr. J. S. HUIZINGA.

The reproduction of the letterhead of Dr. Huizinga in the aforesaid fictitious letter is not a reproduction of Dr. Huizinga's genuine letterhead. The purported signature to the said fictitious letter is not a facsimile or reproduction of the genuine signature of Dr. Huizinga. The substance of the said fictitious letter is a paragraph excerpted from a three-page letter written by the said Dr. Huizinga on August 2, 1928 to Mr. B. Ritholz, c/o National Watch & Jewelry Co., 1445 West Jackson Blvd., Chicago, Ill. The instrument described throughout the aforesaid letter was an instrument known as the Ritholz Refractometer, which is an instrument designed for use by an optometrist, oculist, or ophthalmologist for examining eyes of a patient and is not an instrument to be used by a person for testing his own eyes. The said instrument, the Ritholz Refractometer is one of numerous instruments used by optometrists, oculists, and ophthalmologists in connection with the examination of a patient's eyes for the purpose of fitting him with spectacles. The said Ritholz Refractometer mentioned in the said letter of August 2, 1928, is an altogether different instrument from the said Marvel Eye Tester.

Another of such fictitious letters is the following upon the purported letterhead of Dr. H. G. Walters, which said fictitious letter reads as follows:

Dr. H. G. WALTERS
Senate Office Building
Washington, D. C.

Your tester is based upon unquestionable scientific principles. By its use you will be able to furnish better glasses by mail than the average optometrist can in his own office.

No such letter was written by the said Dr. H. G. Walters. Although he practiced the profession of optometry in Washington,

D. C., he never had a letterhead such as that shown in the said fictitious letter.

Various circulars issued by the respondents containing reproductions of the said fictitious letters also contain reproductions of photographs purporting to be reproductions of photographs of the said Dr. O. B. Nugent, the said Dr. J. G. Huizinga and of the said Dr. H. G. Walters, respectively. None of the said elleged reproductions is that of a photograph of the said Dr. O. B. Nugent, Dr. J. G. Huizinga or of the said Dr. H. G. Walters.

PAR. 9. In connection with the sale by the respondents mentioned in paragraph 2 hereof and with their offering for sale their said spectacles, lenses and spectacle frames, said respondents from April 1, 1931, or thereabouts, until July 1, 1933, or thereabouts, published the same fictitious letters and circulars described in paragraph 8 hereof.

PAR. 10. There were and are among the competitors of respondents, manufacturers and dealers in spectacles, spectacle frames and lenses who do not make, and who have not made in connection with the sale or offering for sale of their products, representations such as those described in paragraphs 5, 6, 7, 8, and 9 hereof.

PAR. 11. The aforesaid representations, advertisements, and statements of the respondents, and the use by such respondents of the aforesaid representations, advertisements, and statements described in paragraphs 5, 6, 7, 8, and 9 hereof, have had the capacity and tendency to mislead and deceive dealers and the purchasing public into the beliefs—

(a) That the respondents would furnish free of cost, spectacles, lenses and spectacle frames;

(b) That by the use of respondents' purported eye-tester, eyes could be successfully examined, and that by the use of such eye-tester the proper kinds of lenses could be prescribed;

(c) That the statements in the fictitious testimonials described in paragraph 8 were true and were actually made by the persons purporting to have made them;

And to induce the purchasing public and dealers to purchase from said respondents, spectacles, lenses and spectacle frames under the beliefs mentioned in (a), (b), and (c) of this paragraph.

PAR. 12. The aforesaid advertisements, representations, and statements as set forth in paragraphs 5, 6, 7, 8, and 9 hereof made by the respondents, have had the capacity and tendency to divert trade to said respondents from competitors and by such representations and

statements substantial competition throughout the various States of the United States has been injured by said respondents to a substantial extent.

CONCLUSION

The acts and practices of the respondents under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors; they are (with the exception of those acts and practices described in paragraph 4 of the said findings as to which said acts and practices the Commission makes no conclusion of law), unfair methods of competition in commerce and constitute violations 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 supplemental and amended complaint of the Commission, the answer of the respondents, the testimony and briefs of counsel for the Commission and counsel for the respondents, respectively (but without oral argument, counsel for the respondents having waived oral argument), and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondents had 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 being fully advised in the premises,

It is hereby ordered, That the respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz, as individuals and as copartners trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names; Dr. Ritholz & Sons, Inc., a corporation, also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names; and the said Morris I. Ritholz, F. J. Ritholz, Ante Ritholz, Samuel J. Ritholz, and F. Ritholz, as individuals and as stockholders of said Dr. Ritholz & Sons, Inc., and also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, their agents and employees, in connection with the advertising, offer-

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ing for sale, and selling in interstate commerce of spectacles, spectacle frames and lenses for spectacles, forthwith cease and desist from—

(1) Representing in circulars and advertisements, or in any other way; that the respondents or either of them furnish to prospective users of their spectacles, such spectacles free, without cost to such purchasers and prospective purchasers, or free without a cent of cost, until and unless the said respondents, their agents and employees actually furnish spectacles, free without cost, or free without a cent of cost, or free without requiring services to be performed in order to secure them.

(2) Stating in circulars or in advertisements of their device called by them "Marvel Eye Tester" or of any other device intended to be used by their customers and prospective customers for testing their own eyes and from stating in any other way the following, or any of the following:

My system has been endorsed by the world's most famous specialist and eye hospitals.

Washington scientist claims tests with my instrument better than by optometrists.

One of the most leading professors of ophthalmology in the world finds my testing device scientific and practical for testing eyes.

The world's largest eye hospital endorses my testing instrument.

By its use you will be able to furnish better glasses by mail than the average optometrist in his own office.

(3) Making any other representation or statement in any of their circulars and/or advertisements regarding their said device called by them "Marvel Eye Tester" of tenor or import similar to or of the nature of any of the aforesaid statements mentioned and described in (2) hereof.

(4) Publishing and using in its circular and advertising matter any of the following purported letters—

CHICAGO EYE, EAR, NOSE & THROAT COLLEGE. Founded 1897. 231 West Washington Street, Southeast Corner Franklin Street, Long Distance Telephone Franklin 0962 P. O. Canal Street Station, CHICAGO.

I find that your instrument is based upon established optical laws governing the construction of all optical instruments.

Your instrument is very interesting and very ingenious and should fulfill the purpose for which it was designed and built.

Dr. NUGENT.

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DR. HUIZINGA
Practice Limited
EYE, EAR, NOSE, AND THROAT
1407 Grand Rapids National Bank Building
GRAND RAPIDS, MICHIGAN

I consider this instrument entirely of practical value in testing the eyes, and based upon well known and long established scientific principles. The Calibrations on this machine have been very carefully checked and verified. This device has been found to be in every way practical for use in testing eyes.

Dr. J. S. HUIZINGA.

DR. H. C. WALTERS
SENATE OFFICE BUILDING
WASHINGTON, D. C.

Your tester is based upon unquestionable scientific principles. By its use you will be able to furnish better glasses by mail than the average optometrist can in his own office.

Dr. H. C. WALTERS.

or any other letters unless such letters be genuine and be actually written by the persons purporting to have written them, in which event all of such genuine letters, if any, including dates, names and addresses or addressees thereof, and the names of the writers thereof, shall be published.

It is hereby further ordered, That the charge in the complaint to the effect that the respondents sold their products as the products of other companies is dismissed without prejudice because there is no proof that said respondents sold their products as the products of any other company except the Shuron Optical Co., Inc., and because, as shown by the findings herein, said last named company in May, 1932, obtained a decree from a United States District Court enjoining the principal respondents herein from continuing said misrepresentation.

And it is hereby further ordered, That the said respondents shall, within 60 days from and after the day of the date of the service upon them of this order file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
FRANK H. FLEER CORPORATION

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

Docket 1832. Complaint, May 12, 1930—Order, Apr. 11, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale of chewing gum in interstate commerce, to cease and desist from the sale thereof through lottery schemes, under which (1) the chance purchaser of a piece of gum having a certain color will receive one or two additional pieces, or a small package, free, and (2) chance purchasers of pieces of gum within the individual wrappers of which there are concealed depictions of parts of certain articles of merchandise, receive said different articles upon securing wrappers bearing depictions of all the component parts making up such article; and from supplying to wholesalers, jobbers and retailers explanatory display cards for retailers' use in selling gum under aforesaid plans.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Mr. Horace M. Barba, 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 Frank H. Fleer Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of 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 Delaware, with its principal office and place of business located in the city of Philadelphia, State of Pennsylvania. It is now and for more than five years last past has been engaged in the manufacture of chewing gum, and in the sale and distribution thereof to wholesale dealers and jobbers, located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the Union to said purchasers at their respective points of location. In the course and conduct of said business respondent is in competition with other individuals, partnerships and

corporations engaged in the manufacture of chewing gum and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers, certain assortments of chewing gum.

(a) Certain of said assortments of chewing gum, known and designated by respondent as "Fleer's Treasure Hunt", are composed of a number of single pieces of chewing gum of uniform size, shape and quality, together with certain packages of chewing gum containing five pieces each. The said single pieces of chewing gum of uniform size, shape and quality are each contained within a wrapper, on which wrapper, but concealed from the prospective purchaser thereof, is printed the picture of an article of merchandise, and on the inside of said wrapper, but concealed from the prospective purchaser thereof until he has opened said wrapper, is printed the picture of a part of said article of merchandise. The aforesaid purchasers of said single pieces of chewing gum who procure the necessary wrappers, which when put together form a complete picture of a particular article of merchandise, are entitled to receive that article of merchandise free of charge as a prize when said wrappers are pasted on a sheet of paper and mailed to the respondent herein. The obtaining of the necessary wrappers so as to complete the picture of an article of merchandise, and thus the obtaining of such articles of merchandise, is determined wholly by lot or chance.

The majority of said single pieces of chewing gum in said assortments of a uniform size, shape, and quality, retailing at the price of one cent each, are of the same color, but a small number of said single pieces of chewing gum are of a different color. The color of all of said single pieces of chewing gum is effectually concealed from the consuming purchaser until he has removed the said wrapper. The purchasers who procure one of the said single pieces of chewing gum of a different color than the majority of said pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the said packages containing five pieces of chewing gum, hereinbefore referred to. This last mentioned prize or package of chewing gum is in addition to the prize or article of merchandise to be secured by obtaining the necessary wrappers in order to form a complete picture, as hereinbefore set forth. The aforesaid purchasers who procure a single piece of chewing gum of a different color than the majority of said pieces of chewing gum are

thus to procure one of the said packages containing five pieces of chewing gum wholly by lot or chance.

Other assortments of chewing gum also known and designated as "Fleer Treasure Hunt" are composed of five-cent packages, each containing five penny sticks of chewing gum. On the inside of each wrapper placed around a piece of the chewing gum is printed a picture of a part of a prize or article of merchandise, and on the inside of the outer wrapper of the five-cent package is a picture of a part of a prize or article of merchandise, and the purchasers who procure wrappers which, when put together, form a complete picture of a particular prize or article of merchandise are entitled to receive the said article of merchandise by pasting said wrappers on a sheet of paper and mailing them to the said respondent.

(b) Certain of said assortments of chewing gum, known and designated by the respondent as "Fleer Red, White, and Blue Package", are composed of a number of single pieces of chewing gum of uniform size, shape and quality, together with a number of packages of chewing gum named and designated by respondent as "Blimps", and a number of packages of chewing gum known and designated by respondent as "Three Cheers", which packages of chewing gum are to be given as prizes to purchasers of said pieces of chewing gum in the following manner:

The majority of said single pieces of chewing gum of uniform size, shape, and quality in said assortments are white, but a small number of said single pieces are pink, and a small number are black. All of the single pieces of chewing gum of a uniform size, shape, and quality are contained within a wrapper which effectually conceals their colors from the prospective purchaser. The said single pieces of chewing gum of a uniform size, shape, and quality in said assortments retail at the price of one cent each, but the purchasers who procure one of said pink pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the five-cent packages of "Blimp" chewing gum; and the purchasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the penny packages of "Three Cheers" chewing gum. The aforesaid purchasers of said chewing gum who procure a pink piece of the chewing gum, or a black piece, are thus to procure one of the five-cent packages of "Blimp" chewing gum or one of the one-cent packages "Three Cheers" chewing gum wholly by lot or chance.

(c) Certain of said assortments of chewing gum, known and designated by respondent as "Fleer Advertising Package", are composed of a number of single pieces of chewing gum of uniform

size, shape, and quality, together with a number of penny packages of chewing gum, part of which are known as "Fruit Hearts", and part of which are known as "Bobs", and also a number of five-cent packages of chewing gum, part of which are known as "Fruit Hearts", and part of which are known as "Bobs", which packages of "Fruit Hearts" or "Bobs" are to be given as prizes to purchasers of the said pieces of chewing gum in the following manner:

The majority of said single pieces of chewing gum of a uniform size, shape and quality in said assortments are white, but a small number are pink, and a small number are black. All of said single pieces of chewing gum are contained within a wrapper which effectually conceals their color from the prospective purchaser. The said single pieces of chewing gum of uniform size, shape, and quality in said assortments retail at the price of one cent each, but the purchasers who procure one of the said pink pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the five-cent packages of "Fruit Hearts" or "Bobs", and the purchasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the one-cent packages of "Fruit Hearts" or "Bobs". The aforesaid purchasers of said chewing gum who procure a pink piece of chewing gum, or a black piece, are to receive one of the said packages of "Fruit Hearts" or "Bobs" wholly by lot or chance.

(d) Certain of said assortments of chewing gum, known and designated by the respondent as "Fleer's Spearmint", are composed of a number of single pieces of chewing gum of uniform size, shape and quality, together with a number of five-cent packages of "Bobs" chewing gum, and "Fruit Hearts" chewing gum, and a number of one-cent packages of "Bobs" chewing gum, and "Fruit Hearts" chewing gum, which packages of "Bobs" or "Fruit Hearts" are to be given as prizes to the purchasers of said pieces of chewing gum in the following manner:

The majority of said single pieces of chewing gum of a uniform size, shape, and quality, in said assortments are white, but a small number of said pieces of chewing gum are pink, and a small number are black. All of said single pieces of chewing gum of a uniform size, shape, and quality are contained in a wrapper which effectually conceals their color from the prospective purchaser. The said single pieces of chewing gum of uniform size, shape, and quality in said assortments retail at the price of one cent each, but the purchasers who procure one of the said pink pieces are entitled to receive, and are to be given free of charge, one of the five-cent packages of "Bobs" or "Fruit Hearts", heretofore referred to, and the pur-

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chasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the one-cent packages of "Bobs" or "Fruit Hearts" heretofore referred to. The purchaser of the last single piece of the aforesaid chewing gum of a uniform size, shape, and quality in each of the said assortments is entitled to receive, and is to be given free of charge, any gift left in the box. The aforesaid purchasers of said single pieces of chewing gum who procure pink pieces or black pieces, and the purchaser of the last piece of chewing gum in said assortments are thus to procure one of said five-cent packages of "Bobs" or "Fruit Hearts" or one of the one-cent packages of "Bobs" or "Fruit Hearts", wholly by lot or chance.

(e) Certain of said assortments of chewing gum, known and designated by the respondent as "One, Two, Three Package", are composed of 150 pieces of chewing gum of uniform size, shape and quality packed in two blue boxes, together with 150 pieces of chewing gum packed in a red box. The pieces of chewing gum in the red box are to be given as prizes to the purchasers of the pieces of chewing gum in the blue boxes in the following manner:

The pieces of chewing gum in the blue boxes are colored respectively, white, black, and red, and are packed in rotation as to the colors of said pieces of chewing gum. Said pieces of chewing gum are contained in a wrapper which effectually conceals their color from the prospective purchaser. The said pieces of chewing gum of uniform size, shape, and quality in said assortments retail at the price of one cent each. The purchasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one extra piece of chewing gum from the red box, and the purchasers who procure one of the said red pieces of chewing gum are entitled to receive, and are to be given free of charge, two extra pieces of chewing gum from the red box. The aforesaid purchasers of said chewing gum who procure a black piece of chewing gum, or a red piece, are thus to procure, respectively, one or two of the said pieces of chewing gum contained in the red box wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said assortments of chewing gum heretofore referred to, display cards to be used by the dealers in offering said chewing gum for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of chewing gum are being sold in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of said respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in

connection with the aforesaid display cards, and sell said assortments to the public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products, in accordance with respondent's sales plans, hereinabove set forth.

PAR. 4. Respondent's aforesaid practices tend to and do induce many of the consuming public to purchase respondent's said chewing gum in preference to chewing gum of respondent's said competitors, because of (a) the chance of obtaining free of charge, by procuring the required wrappers, one of the pictured articles of merchandise, and/or the packages consisting of five pieces of chewing gum; or (b) the chance of obtaining free of charge one of the five-cent packages of "Blimp" chewing gum, or one of the one-cent "Three Cheers" chewing gum; or (c), (d), the chance of obtaining free of charge one of the five-cent packages of "Bobs" or "Fruit Hearts" chewing gum, or one of the one-cent packages of "Bobs" or "Fruit Hearts" chewing gum; or (e) the chance of obtaining free of charge one or two extra pieces of chewing gum.

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

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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 12th day of May, 1930, issued its complaint against the above-named respondent, in which complaint it is alleged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On May 22, 1930, the respondent filed its answer to said complaint. Respondent has now offered for filing a substituted answer dated March 29, 1934, wherein it moves to withdraw its previous answer and states that it does not desire to contest the proceeding, and consents that the Federal Trade Commission may make, enter and serve upon it an order to cease and desist from the violations of law alleged in the complaint, in accordance with the provisions of Section 2, Rule III, of the Rules of Practice of the Commission, and

the Commission hereby accepts this substituted answer in lieu of the former one heretofore filed, and being fully advised in the premises:

It is now ordered, That the respondent, Frank H. Fleer Corporation, its officers, agents, representatives, and employees in the manufacture, sale and distribution in interstate commerce of chewing gum, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, chewing gum so packed and assembled that sales of such chewing gum to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers packages or assortments of chewing gum which are used without alteration or rearrangement of the contents of such packages or assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the chewing gum contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum of uniform size, shape, and quality, but of different colors, together with additional pieces of chewing gum or small packages of chewing gum, which said additional pieces of chewing gum or small packages of chewing gum are to be given as prizes to the purchaser procuring a piece of chewing gum of a particular color.

(4) Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum of uniform size, shape, and quality, contained within a wrapper, which wrapper has printed thereon the picture of an article of merchandise and also the picture of a part of said article of merchandise, which said article of merchandise pictured on said wrappers is to be given to the ultimate purchaser procuring wrappers bearing pictures of all the parts of said articles of merchandise.

(5) Furnishing to wholesale dealers, jobbers, and retail dealers display cards either with packages or assortments of chewing gum or separately, bearing a legend or legends or statements informing the purchaser that the chewing gum is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its chewing gum, which said advertising literature informs the purchasers and purchasing public:

(a) That, upon the obtaining by the ultimate purchaser of a piece of chewing gum of a particular color, one or two additional pieces of chewing gum or a small package of chewing gum will be given free to said purchaser.

(b) That the ultimate purchaser of pieces of chewing gum, each separate wrapper of each piece of which chewing gum bears the picture of a part of an article of merchandise, will, if he obtains wrappers bearing pictures of all the parts of said article of merchandise, receive said article of merchandise free of charge by forwarding said wrappers to the respondent.

It is further ordered, That the respondent, Frank H. Fleer Corporation, within 30 days after the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

Complaint

18 F.T.C.

IN THE MATTER OF
ELBEE CHOCOLATE COMPANY, INC.¹

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

Docket 1864. Complaint, Aug. 18, 1930—Order, Apr. 11, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale in interstate commerce of candy and candy products, to cease and desist from selling the same through lottery schemes under which ultimate purchaser of, (1) a piece of the assortment, with a particular colored center, receives a larger piece or small package of candy, free; ultimate purchaser of, (2) a piece with a hollow center containing two pea-shaped green pieces, receives a small package, free; and, (3) ultimate purchaser of the last piece in the assortment, receives as a prize a larger piece, or a small package or one pound box of candy, free; and from supplying to wholesalers, jobbers and retailers explanatory display cards for retailers' use in selling candy under aforesaid plans.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Mr. Victor Warren Milch, 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 Elbee Chocolate Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of 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, with its principal office and place of business located in the City of New York, State of New York. It is now and for more than five years last past has been engaged in the manufacture of candies, and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the City of New York, State of New York, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in

¹ For descriptive summary of large group of candy lottery cases decided as of April 3, see *ante*, pp. 269, 276, 277.

the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candy.

(a) One of said assortments of candies is composed of a number of pieces of chocolate-covered candies of uniform size, shape, and quality together with a number of larger pieces of candy and a 3-ounce package of candy, which larger pieces of candy, and 3-ounce package of candy, are to be given as prizes to purchasers of said chocolate covered candies in the following manner:

The majority of the said chocolate-covered candies in said assortments have centers of the same color, but a small number of said chocolate-covered candies have centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortments, retail at the price of 1 cent each, but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive, and are to be given free of charge one of the larger pieces of candy hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate-covered candies of uniform size, shape, and quality in each of said assortments, is entitled to receive, and is to be given free of charge the 3-ounce package of candy heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortments, are thus to procure one of the said larger pieces of candy or the 3-ounce package of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said assortments of candy heretofore referred to, a display card to be used by the retailer in offering said candies for sale to the public, which display card bears a legend or statement, informing the prospective purchaser which color of the said colored center candies contained in said assortment entitle the purchaser to a prize, and that the purchaser of the last piece of candy in said assortment will receive the 3-ounce package of candy free of charge.

(b) Another of said assortments of candies is composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of small packages of candy and a 1-pound box of candy, which small packages of candy and 1-pound box of candy, are to be given as prizes to purchasers of said candies of uniform size, shape, and quality, in the following manner:

The said pieces of candy of uniform size, shape, and quality, have hollow centers in which are placed one or two pea-shaped green can-

dies. The majority of the said pieces of candy of uniform size, shape and quality having hollow centers, contain one pea-shaped green candy, but a small number of the said candies contain two pea-shaped green candies. The said pieces of candy of a uniform size, shape and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of the said candies containing two pea-shaped green candies in the hollow center, are entitled to receive and are to be given free of charge, one of the small packages of candy hereinbefore referred to. The purchaser of the last piece of aforesaid candies of a uniform size, shape and quality in each of said assortments, is entitled to receive and is to be given free of charge, the 1-pound box of candy heretofore referred to. The aforesaid purchasers of said candies, who procure a candy containing two pea-shaped green candies in the hollow center, and the purchaser of the last piece of candy in said assortment, are thus to procure one of the said small packages of candy, or the 1-pound box of candy wholly by lot or chance.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to candies of respondent's said competitors because of (a) the chance of obtaining said larger pieces of candies or the 3-ounce package of candy, free of charge, or, (b) the chance of obtaining said small packages of candy or the 1-pound box of candy, free of charge.

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

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 August, 1930, issued its complaint against the above-named respondent, in which complaint it is alleged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On September 15, 1930, the respondent filed its answer to said complaint. Respondent has now offered for filing a substituted answer, dated April 3, 1934, wherein it moves to withdraw its previous answer and states that it does not desire to contest the proceeding, and consents that the Federal Trade Commission may make, enter, and serve upon it an order to cease and desist from the violations of law alleged in the complaint, in accordance with the provisions of Section 2, Rule III, of the Rules of Practice of the Commission, and the Commission hereby accepts this substituted answer in lieu of the former one heretofore filed, and being fully advised in the premises:

It is now ordered, That the respondent, Elbee Chocolate Co., Inc., its officers, agents, representatives, and employees in the manufacture, sale, and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages, or assortments of candy which are used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of chocolate-covered candy of uniform size, shape, and quality, having centers of different color, together with larger pieces of candy or small packages of candy, which said larger pieces of candy or small packages of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color or procuring the last piece of candy in said assortment.

(4) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size, shape, and quality, having hollow centers in which are placed one or two pea-shaped green candies, together with small packages of candy and 1-pound boxes of candy, which said small packages of

candy or 1-pound boxes of candy are to be given as prizes to the purchaser procuring a piece of candy having two pea-shaped green candies in the center or procuring the last piece of candy in said assortment.

(5) Furnishing to wholesale dealers, jobbers, and retail dealers display cards, either with packages or assortments of candy or candy products, or separately bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining by the ultimate purchaser of a piece of candy, with a particular colored center, a larger piece of candy or small package of candy will be given free to said purchaser.

(b) That, upon the obtaining by the ultimate purchaser of a piece of candy with a hollow center containing two pea-shaped green pieces of candy, a small package of candy will be given free to said purchaser.

(c) That, upon the purchase of the last piece of candy in the package or assortment, a larger piece of candy or a small package of candy or a 1-pound box of candy will be given as a prize.

It is further ordered, That the respondent, Elbee Chocolate Co., Inc., within 30 days after the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF

W. W. NUSS, DOING BUSINESS AS THE NUSS RESEARCH
LABORATORY

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

Docket 2148. Complaint, Jan. 15, 1934—Decision, Apr. 11, 1934

Where an individual engaged in the sale of certain medicinal preparations designated and described by him as "Master Hormones",

(a) Advertised said preparations as constituting an effective preventive of and competent and adequate remedy for all ailments of the body, including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., and represented that said "Master Hormones" constituted "the most rapid and positive method in the treatment of diminished resistance and the resulting diseases thereof", the facts being they did not constitute such a preventive or competent and adequate treatment for all diseases, nor for tuberculosis and other diseases named by him; and

(b) Used a trade name, which included the words "Research Laboratory" on his letterheads, labels, and other literature and as a signature to letters, circulars, etc., sent out to prospective customers, notwithstanding fact that he neither owned nor operated a laboratory at any time, as usually understood by the term;

With capacity and tendency to confuse, mislead and deceive members of the public in the aforesaid respects, and to induce them to buy and use his said preparations because of the erroneous beliefs thereby engendered, and to divert trade to him from competitors engaged in the sale of medicines and preparations adapted to and used for the prevention and treatment of the various diseases and ailments for which his said "Master Hormones" were offered, without in any wise misrepresenting the therapeutic effects of their products, and with result of so diverting business, to the substantial injury of competitors and the public:

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.

Mr. Harry D. Michael 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 sale and distribution of certain medicinal preparations which he designated and described as "Master Hormones", with advertising falsely or misleadingly as to qualities or properties of product, and with using

misleadingly trade name, 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 represents his said preparations as constituting an effective preventive or competent and adequate remedy for all diseases of the body, including such chronic diseases as tuberculosis, carcinoma, etc., and makes use of a trade name including the words "research laboratory" on letterheads, labels, and other literature and as a signature on letters, etc., sent to prospective customers, notwithstanding the fact that said preparations do not constitute such preventive or treatment for all ailments or for the chronic diseases named, and he neither owns nor operates a laboratory of any kind as the term is usually understood, and his said statements and representations, and their implications are greatly exaggerated and grossly inaccurate; with tendency and capacity to confuse, mislead, and deceive members of the public in the aforesaid respects, and to induce them to buy and use said preparations because of the erroneous beliefs engendered thereby, and to divert trade to himself from competitors engaged in the sale of medicines and preparations adapted for the prevention and treatment of the various diseases and ailments for which his own are offered; all to the injury and prejudice of the public and competitors.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 15th day of January, 1934, issued its complaint against the respondent herein, W. W. Nuss, doing business under the name and style of The Nuss Research Laboratory, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Said complaint was duly served upon said respondent on the 18th day of January, 1934. Attached to said complaint and served upon respondent as aforesaid was a notice fixing the 23d day of February, 1934, and the office of the Federal Trade Commission in Washington, D. C., as the time and place of hearing upon the charges set forth in said complaint. Said notice further notified said respondent that an answer to said complaint would be required to be filed with the Commission on or before said date for hearing and that upon failure to appear or answer the

¹ Allegations of the complaint are set forth substantially verbatim in the findings, respondent having defaulted under the rules of the Commission.

following provision of the Rules of Practice adopted by the Commission would be applicable, to wit:

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 hearings on the charges set forth in the complaint.

Said respondent having failed either to appear or to file answer to the complaint herein, he is hereby found and adjudged to be in default by reason of such failure to appear or to file answer.

Thereupon this proceeding came on for hearing by the Commission on said default, and the Commission, having duly considered the matter and being fully advised in the premises, finds, pursuant to said Rules of Practice, that the allegations of said complaint are true and that respondent has waived hearings on the charges set forth therein. The Commission further finds that this proceeding is to the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. W. Nuss, is the sole owner and manager of the business conducted by him under the name and style of The Nuss Research Laboratory. Respondent has owned and conducted said business since the year 1932 and has his office and principal place of business in the city of Elkland in the State of Pennsylvania.

PAR. 2. Said business so owned and conducted by respondent consists in the sale and distribution in interstate commerce of certain medicinal preparations designated and described as "Master Hormones". Respondent in the course and conduct of his said business causes his said preparations to be transported in interstate commerce from his said place of business in Pennsylvania to, into, and through States of the United States other than Pennsylvania to various members of the public to whom they are or have been sold. Respondent usually sells his said preparations direct to physicians for ultimate distribution and sale to members of the consuming public.

PAR. 3. During the time above mentioned other individuals, firms and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of preparations similar in kind or as to purposes of use as those of respondent and also of those designed, intended and used for the treatment of the various diseases and bodily ailments for which respondent's said preparations are represented and advertised as

treatments as hereinafter shown, and such other individuals, firms, and corporations have caused and do now cause their said preparations, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof. Respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said preparations with such other individuals, firms, and corporations. Said competing preparations are sold in some instances to physicians for ultimate distribution and sale to members of the consuming public and in other instances to wholesale and retail druggists for ultimate resale to members of the public.

PAR. 4. Respondent, in advertising his said "Master Hormones" makes use of circular letters which he distributes by mail to doctors in various States of the United States in which it is represented that said "Master Hormones" constitute an effective preventative of and a competent and adequate remedy for all diseases of the human body including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc. An example of the statements made by respondent in his circular letters is the following:

Master Hormones are the most rapid and positive method in the treatment of diminished resistance and the resulting diseases thereof.

Respondent also by the use of said trade name, "The Nuss Research Laboratory", on his letterheads, labels, and other literature and by the use of said trade name as a signature to letters, circulars, etc., sent out to prospective customers, represents and implies that he owns and operates a research laboratory.

PAR. 5. In truth and in fact respondent's said preparations do not constitute a preventative of or a competent and adequate treatment for all diseases of the human body and do not constitute such a preventative of or treatment for tuberculosis, carcinoma, undulant fever and other diseases named by respondent in his said circular letter. Respondent does not own or operate a laboratory of any kind as such term is usually understood. All of such statements, representations and implications are either untrue or greatly exaggerated and grossly inaccurate.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said preparations constitute a preventative of and a component and adequate treatment for all diseases of the human body and more particularly for the treatment of chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., when in fact such are not the facts or only to a limited extent. The use of said trade name by re-

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spondent has had and does have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent owns and operates a research laboratory when such is not the fact. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of medicines and preparations adapted to and used for the prevention and treatment of the various diseases and ailments of the human body for which respondent represents his said preparation to be a preventative or treatment.

PAR. 7. There are among the competitors of respondent in the sale of his said products those who in no wise misrepresent the therapeutic effects of their competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from his competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices 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 commerce and are in 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 duly heard by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That respondent, W. W. Nuss, doing business under the name and style of The Nuss Research Laboratory, or doing business under his own or under any trade name, his agents, representatives, servants and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of any or all of his so-called "Master Hormones", or of preparations of the same or substantially the same composition,

respectively, under any other name or names, cease and desist from representing by express statements or by implication that any or all such preparations constitute an effective preventative of or a competent and adequate remedy for, or treatment of all diseases of the human body, including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., and from representing by express statement or by implication by use of the word "laboratory" in the trade name or otherwise, that he owns or operates a research or other laboratory unless such be the fact.

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

Syllabus

IN THE MATTER OF
**WALTER A. VELLGUTH, INDIVIDUALLY AND TRADING
 AS THE WALTER A. VELLGUTH COMPANY**¹

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

Docket 1925. Complaint, Mar. 7, 1931—Decision, Apr. 16, 1934

Where an individual engaged in the manufacture and sale of candies, including four assortments composed of, (1) individually wrapped bars of uniform size, shape, and quality, within the wrappers of which there were concealed slips containing the figure 1¢, 2¢, or 3¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, (2) bars similarly wrapped, the concealed slips of which contained figures ranging from 1¢ to 5¢, as the case might be, as the price to be paid, determined as above set forth, (3) bars similarly wrapped, the concealed slips of which contained the figures 0¢ to 5¢, as the price to be paid, as aforesaid, and, (4) chocolate-covered penny candies of uniform size, etc., together with certain larger pieces or bars, acquisition of one of which, as a prize, was determined by purchaser's chance selection of one of a relatively few of said penny pieces, the color of the enclosed concealed centers of which differed from that of the majority, and acquisition of two of which was determined by similar chance selection of a still different color;

Sold said assortments, together with explanatory display cards for retailers' use in offering the same to the public, to wholesalers and jobbers, in competition with those who do not offer and place in the hands of others packages or assortments of candy to be distributed, or which may without rearrangement, be distributed by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase his candy in preference to that of competitors because of the chance of obtaining one of said bars for nothing, or for less than the particular assortment's maximum price, or of obtaining certain pieces free in accordance with color of center selected, many competitors who do not sell candy so packed and assembled that it can be resold to the public by lottery or chance, were put to a disadvantage and trade was diverted from them to him and to others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the States in selling and distributing candy by lot or chance, the industry was injured and freedom of legitimate competition therein was restrained and impaired;

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

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.

¹ For descriptive summary of large group of candy lottery cases decided as of April 3, see *ante*, pp. 269, 276, 277.

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 in the manufacture of candy and sale and distribution thereof to wholesalers and jobbers in California and Hawaii, and with principal office and place of business in San Francisco, with using lottery scheme in merchandising, in that it sells to said wholesalers and jobbers, together with explanatory display cards for retailers' use in offering the candies to the public, four kinds or types of assortments, so arranged in the case of three that the particular price, if any, paid the retail merchant by the consumer, depends on latter's chance selection, and so arranged in the case of the fourth, that acquisition of a larger piece, without charge, depends upon such chance selection¹, with result of thereby supplying and placing directly in the hands of wholesalers, jobbers, and retailers the means of conducting lotteries in the sale of its candy in interstate commerce, in accordance with the sales plan described, and with effect of inducing many of the consuming public to purchase its candies in preference to those of competitors because of the chance of obtaining a piece of candy for nothing, or for less than the maximum price charged, or of obtaining certain pieces free of charge, and with the tendency so to induce; 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 respondent, Walter A. Vellguth, individually and trading as The Walter A. Vellguth Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Pursuant to the provisions of said act the Commission served its complaint upon the respondent on March 11, 1931, with notice of hearing on April 10, 1931, on the charges set forth in the complaint together with a copy of the rules of practice adopted by the Commis-

¹ The arrangement and working of the four assortments, as alleged in the complaint, may be found set forth in the findings, *infra*, pp. 388, 389.

sion 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 respondent to appear or to file answer thereto.

The time of the respondent to appear and file answer to the complaint in accordance with the said rules of practice, expired on April 10, 1931, and the respondent having failed to appear and to answer the complaint, and no extension to appear and to answer having been requested or granted, and the respondent being in default for want of appearance and answer, in accordance with the provisions of Section 3, Rule III, of the Rules of Practice of the Commission, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Walter A. Vellguth is an individual and trades under the name The Walter A. Vellguth Co. He has his principal office and place of business in the city of San Francisco, State of California. Respondent is now and for more than eight years last past has been engaged in the manufacture of candies and the sale and distribution thereof to wholesale dealers and jobbers located in the State of California and in the Territory of Hawaii, and respondent causes said products when so sold to be transported from his place of business in the city of San Francisco, State of California, to said wholesale dealers and jobbers in candy located in the State of California and in the Territory of Hawaii. The said wholesale dealers and jobbers located in the State of California are engaged in the sale and distribution of candy to the retail trade located throughout the State of California and throughout the States of the United States adjacent to the State of California. The said wholesale dealers and jobbers cause respondent's said products when so sold to be transported from their principal place of business in the State of California into and through other States of the United States to said retail dealers at their respective points of location.

The said wholesale dealers and jobbers in the Territory of Hawaii sell and distribute said candy to the retail trade located throughout the Territory of Hawaii. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other individuals, partnerships, and corporations engaged in the manufacture of candy and in the sale and distribution of the same in interstate commerce. The said wholesale

dealers and jobbers located in the State of California and the Territory of Hawaii are in the course and conduct of their respective businesses engaged in active competition with individuals, partnerships, and corporations engaged in the sale and distribution of candy in commerce between and among the various States in the United States and between and among the various States of the United States and the Territory of Hawaii.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, the respondent sells to the said wholesale dealers and jobbers in candy mentioned and set forth in paragraph 1 hereof certain assortments of candy.

(a) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and each of said bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slip are 1¢, 2¢, or 3¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of uniform size, shape, and quality at a price of 1¢, 2¢, or 3¢, the same being determined wholly by lot or chance.

(b) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and each of said bars of candy is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of a uniform size, shape, and quality at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(c) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and each of said bars of candy is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 0¢, 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus

procure bars of candy of a uniform size, shape, and quality free or at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(d) Certain of said assortments of candies are composed of a number of pieces of chocolate-covered candies of uniform size, shape, and quality together with a number of larger pieces or bars of candy, which larger pieces or bars of candy are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of said chocolate-covered candies in said assortment have centers of the same color (for example, white) but a small number of said chocolate-covered candies have centers of a different color (for example, chocolate or pink) and also a small number of said chocolate-covered candies have centers of a still different color (for example, green or red). The said candies of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one or two of the said larger pieces or bars of candy hereinbefore referred to (for example, the purchaser procuring a piece of said candy of a uniform size, shape, and quality having a pink center is entitled to receive and will be given free of charge one of the said larger pieces or bars of candy, and a purchaser procuring a piece of said candy of a uniform size, shape, and quality having a green center is entitled to receive and will be given free of charge two larger pieces or bars of candy). The aforesaid purchasers of said candies of a uniform size, shape, and quality who procure a candy having a center colored differently from the majority of said pieces of candy are thus to procure one or two of the said larger pieces or bars of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale to the public, which display cards bear a legend or statement informing the prospective purchaser that the said assortment of candies are being sold in accordance with the sales plans above mentioned.

PAR. 3. The said retail dealers purchasing respondent's candy from said wholesale dealers and jobbers in candy expose said assortments of candy for sale in connection with the aforesaid display cards and sell said candy to the purchasing public in accordance with respondent's aforesaid sales plan. Respondent thus supplies and places directly in the hands of wholesale dealers and jobbers in candy and indirectly in the hands of retail dealers the means of

conducting lotteries in the sale of its candy in interstate commerce in accordance with the respondent's sales plan hereinabove set forth.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof and among the competitors of respondent's wholesale dealers and jobbers also referred to in paragraph 1 hereof are many who sell candies at wholesale and retail and who do not offer and place in the hands of others packages or assortments of candy which are to be distributed or which may, without rearrangement, be distributed by lot or chance. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors, because of (a) the chance of obtaining one of the said bars of candy at a price of 1¢, or 2¢, rather than at the maximum price of 3¢, or (b) the chance of obtaining one of said bars of candy at a price of 1¢, 2¢, 3¢, or 4¢, rather than at the maximum price of 5¢, or (c) the chance of obtaining one of said bars of candy free or at a price of 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or (d) the chance of obtaining certain pieces or bars of candy free of charge. For about eight years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondent, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondent do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondent and others using similar methods, from said competitors. The use of such

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methods by respondent in the sale and distribution of candy is prejudicial and injurious to the public and to his competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Walter A. Vellguth, individually and trading as The Walter A. Vellguth Co., under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard 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, Walter A. Vellguth, individually and trading as The Walter A. Vellguth Co., his agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail bars of candy of uniform size, shape, and quality containing within their wrappers tickets bearing different prices or tickets bearing the legend that the bar of candy is free.

(4) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of chocolate-covered candy of uniform size, shape, and quality having centers of different color, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(5) Furnishing to wholesale dealers, jobbers, and retail dealers, display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products which said advertising literature informs the purchasers and purchasing public—

(a) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 1¢, 2¢, or 3¢, depending upon the price ticket enclosed in the bar of candy selected by the purchaser.

(b) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 1¢, 2¢, 3¢, 4¢, or 5¢, depending upon the price ticket enclosed in the bar of candy selected by the purchaser.

(c) That certain bars of candy of uniform size, shape, and quality will be obtained free of charge or for a price of 1¢, 2¢, 3¢, 4¢, or 5¢, depending upon the ticket enclosed in the wrapper of the bar of candy selected by the purchaser.

(d) That, upon the obtaining by the ultimate purchaser of a piece of candy with a particular colored center, one or two larger pieces of candy will be given free to said purchaser.

It is further ordered, That the respondent above named 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 in which this order has been complied with and conformed to.

Syllabus

IN THE MATTER OF
CARLTON MILLS, INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2085. Complaint, Jan. 17, 1933—Decision, Apr. 16, 1934

Where a corporation engaged in the sale and distribution, direct to user, C. O. D., through house to house canvassers, of (1) shirts, which it caused to be made for it, as specified, on a contract basis at a specified per dozen contract price, from cloth purchased by it in finished form, chiefly, cut into patterns in its own workrooms, and supplied, together with buttons and other fittings, to the manufacturer, who furnished the thread and carried on operations independently from such point with personnel engaged by him, (2) ties, similarly made and procured, (3) hosiery purchased in the finished form from the manufacturer, with no control over the making thereof, and, (4) underwear and outside jackets, some of which it similarly purchased,

- (a) Represented in specialty and general periodical advertising directed to securing such canvassers, that purchaser of three shirts, or other articles, would be given, free of charge, an additional garment, through such phrases as "One shirt free with every three", "One tie free with every three", "One suit of underwear free with every three", etc., facts being that cost of the alleged free article, together with profit on all those sold, was included in the price charged; with capacity and tendency to mislead and deceive the consuming public and with effect of so doing in the case of a substantial number thereof.
- (b) Used such words, phrases, and legends in sample books, and periodical and circular advertising, as "Mills", "Manufacturers", "Direct from mill to wearer", "Assumes full command over its supreme custom quality away back at the looms, * * * our gigantic resources and facilities control each stage in the designing and manufacture", "Nationally known men's wear manufacturers", "* * * 100 percent manufacturer, operating only one overhead and doing a nation-wide business", "* * * the bigger the organization the more economically it can merchandise * * *", and "When the organization happens to be the actual manufacturer * * *, this logic becomes even more significant", and thereby falsely represented that it was the manufacturer, weaver, or knitter of the products dealt in by it, and that it therefore sold at a better price direct to the consumer than did competitors, who reached him through retail channels; with capacity and tendency to mislead and deceive purchasers and prospective purchasers into buying its said products in the belief that it owned or operated mills and manufacturing establishments, and made the merchandise sold by it, and with the effect of so doing and of adversely affecting sales of dealers in men's furnishings, who make such merchandise and sell the same direct to the user or wearer, and sales of dealers therein who do not falsely represent themselves as the manufacturers thereof.
- (c) Described certain hosiery dealt in by it as "pure thread silk reinforced with art silk", and as "pure thread silk reinforced with lustrous synthetic

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yarn", and in its sample books advertised certain coats as "Articoat—king of all sheep-lined moleskins", "Alaskan Lethercoat", and "Storm King Lethercoat", facts being said articles were neither pure thread silk, moleskin or leather; with effect of misleading and deceiving customers and prospective customers in respect of their composition, and with capacity and tendency so to do;

- (d) Described certain shirt materials in canvassers' sample books as "Manhattan" broadcloth, or as "Columbia", "Ambassador", or "Breslin" broadcloth, as the case might be, notwithstanding fact that such words had long been used by certain shirt manufacturers in carrying on their respective businesses and/or sale of their product, so that said words had become well known in such connection as identifying the product of the said various manufacturers, and thereby tended to lead the consuming public to believe that its products were either made by the aforesaid manufacturers, or that the material therefor was furnished by them; with effect of injuring both the aforesaid and other manufacturers who sell and distribute their products under their respective trade marks, and manufacturers who do not so sell their products, or indulge in such practices, and to the actual and probable injury of those dealers who sell well known trade marked shirts, and those who sell shirts not so well known;

All with capacity and tendency to mislead and deceive purchasers and prospective purchasers of its said products, to the substantial injury of competitors, from whom trade was unfairly diverted:

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

Mr. Henry C. Lank for the Commission.

Mr. Meyer Kraushaar, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale and distribution in interstate commerce of men's shirts, neckties, hosiery, underwear, and coats and jackets direct to the consuming public through house to house canvassers or representatives, and with office and principal place of business in New York City, with advertising falsely or misleadingly as to free product, using misleading corporate name, appropriating trade name of competitive products, and misrepresenting business status and composition of product, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising in magazines and other publications for representatives, states that it is giving "free merchandise", including shirts, ties, and other articles dealt in by it, and in sample kits furnished its representatives,

announces a plan whereby one or more articles are given "free" in connection with the purchase of a certain number of other articles,¹ the facts being that the articles thus referred to are not given free, but the cost thereof is included in the specified price to be paid by the consumer.

Respondent further, as charged, features the word "Mills" in its corporate name and in its sales kits and other advertising matter, and represents itself as a manufacturer selling direct, with exceptional values, etc.,² notwithstanding fact that it neither owns nor operates a mill or mills, in which it makes its said merchandise.

Respondent further, as charged, in its sample kits designates certain fabrics from which its shirts are made as "Manhattan Broadcloth", "Columbia Broadcloth", "Breslin Broadcloth", and "Am-

¹Advertisements in periodicals included, according to allegations of the complaint, the following:

"*Big pay.*—Give Free Merchandise and Get Cash Profits on First Call! Giving Away Shirts, Ties, Underwear, Hosiery! Money in your hand—Here's Your Opportunity!

"Accept this free golden invitation to represent Carlton Mills—nationally known Men's Wear manufacturers—a leader in the direct-to-wearer field. Schooling or training unnecessary. Doesn't cost you a penny. Cash in on our series of free merchandise offerings. Note the panels to the right and you'll understand why they are irresistible," etc.

Statements in the sample kits, above referred to, included, according to the allegations of the complaint, the following:

"1 Shirt Free with every 3—25% more value for your dollar."

"Special Free Offer—Gold plated valet Auto-Strop razor and strop given free with each order for 3 shirts for \$14.75."

"1 Tie Free with every 3—2 Ties Free with every 6."

"1 pr. of hose free with each order for 6 pr. 2 pr. of hose free with each order for 12 pr."

"3 Unionsuits for \$2.98. 1 Suit Free with 3."

"Flat knit style unionsuits. 1 free with each order for 3."

"Carlton supreme offerings in rayon (2 piece) underwear—1 shirt free with every 3 shirts, 1 pair of shorts free with every 3 shorts."

"Special Free Offer—1 undershirt free with each order for 3 undershirts."

"Special Free Offer—1 pair of shorts free with each order for 3 pair of shorts."

²Statements included in such representations, according to the allegations of the complaint, included the following:

"America's Greatest Shirt Values Direct from Maker to Wearer"

"America's Greatest Values—Buy direct and Save"

"Accept this Free Golden Invitation to Represent Carlton Mills—Nationally known Men's Wear Manufacturers—A Leader in the Direct-to-Wearer Field"

"Carlton Mills, Inc., Manufacturers of the Carlton Custom Quality Line"

"Custom Quality—Carlton Mills, Inc.—Shirt Manufacturers"

"Direct from Mill to Wearer—Through You at Big Savings"

"Remember Carlton is 100% the Manufacturers, Operating Only One Overhead and Doing a Nation-Wide Business"

"Doesn't it sound logical that the bigger the organization the more economically it can merchandise its products? When that organization also happens to be the actual manufacturer of the products and not a jobber, this logic becomes even more significant."

"The prices in your sample book reflect these economies in black and white. From these prices is deducted only one profit. Carlton's manufacturing profit . . ."

"Carlton assumes full command over its supreme Custom Quality away back at the looms. From that important point, when the first slender thread is fashioned into fabric, our gigantic resources and facilities control each stage in the design and manufacture. Little wonder, therefore, that Carlton takes genuine pride in affixing its label of quality to the completed garments of its own making."

bassador Broadcloth", with capacity and tendency to mislead and deceive its representatives and the purchasers of its shirts into believing that shirts made from the cloth thus designated, are the products, as the case may be, of the Manhattan Shirt Co., the Columbia Shirt Co. of New York, N. Y., The Breslin Shirt Co. of New York, N. Y., or the Hirsch-Friedman Co., of Chicago, Ill., the first three of which companies have long sold and distributed their products under the first three names, and last of which has long distributed its product under the name "Ambassador", so that said words have become known among consumers of shirts as designating, as the case may be, the respective products of the aforesaid companies.

Respondent further, as charged, in its sample kits, represents and describes certain men's hosiery made from silk and rayon as "pure thread silk reinforced with art silk", and certain of its men's and boy's coats as "Alaskan Lethercoat", "Storm King Lethercoat", and "Articoat—King of all sheep-lined moleskins", notwithstanding fact that hosiery in question is not made entirely of silk, nor the coats of leather or moleskin.

Respondent further, as charged, sells by sample falsely or misleadingly, in that, while including in its representatives' sample kits, swatches or samples illustrating design and pattern of its various shirt materials, as a means of soliciting and obtaining orders for its said products upon the basis of the purchaser's selection from such samples, it nevertheless and notwithstanding the implied representation that it will ship shirts in accordance with design, style, etc., selected and ordered, makes it its practice, in cases where the particular selection has been exhausted, to ship shirts of substituted designs, patterns, and styles of its own selection, without giving customer a reasonable opportunity to make a lieu selection, so that many customers, as a result of said practice, and the sending of the shirts C. O. D., keep and pay for such articles, when they would not have ordered the same had they been advised that the design, style, or pattern of their selection was exhausted.

Each of said various false and misleading representations, as alleged, 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", and "said advertisements and representations and each of them have the capacity, tendency, and effect of diverting a substantial amount of trade to respondent from its competitors to their injury," and "use by respondent," as charged, "of such false, misleading and deceptive representations, statements, and advertisements, constitute practices or methods of competition which tend to

and do prejudice and injure the public, unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of selling and distributing men's wear," and constitute unlawful uses and practices, and unlawful and unfair methods of competition in violation 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, Carlton Mills, Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer, hearings were had and the evidence was duly recorded and filed in the office of the Commission.

Thereupon this proceeding came on for final hearing on the briefs and oral arguments for both the Commission and the respondent, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Carlton Mills, Inc., is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 79 Fifth Avenue, in the City of New York in said State. Respondent was organized and incorporated in August, 1925, and since that date has been engaged in the sale and distribution of men's shirts, underwear, hosiery, neckties, and outside coats and jackets to purchasers located throughout the various States of the United States. In the course and conduct of its business the respondent is in competition with other corporations, individuals, and partnerships engaged in commerce between and among the various States of the United States.

PAR. 2. Respondent is engaged in selling men's shirts, underwear, hosiery, neckwear, and coats or jackets throughout the United States to users or wearers only. It employs representatives in many States who go from house to house soliciting and accepting orders. The agent collects a specified deposit on each sale at the time the order is

taken and retains said sum for his commission. The agent then forwards said order to the respondent who ships the goods, generally by mail, direct to the consumer. The merchandise is sent C. O. D. and the respondent thus collects the balance of the purchase price. In soliciting such business respondent, through its agents and directly through the mail, distributes samples, sample books and other printed matter illustrating the colors, designs, patterns, and material of the merchandise offered for sale. The respondent sends out approximately twenty-five thousand sample books annually to salesmen and prospective salesmen. From the persons to whom such sample books are sent the respondent obtains its active representatives. It has about five thousand such active representatives distributed throughout the United States. About four-fifths of the persons to whom respondent sends its sample books never become active representatives but send in probably only one order or none.

PAR. 3. The sample books contain small pieces of material which are represented to be identical with the material from which the merchandise is manufactured. Sample books representative of those used by respondent in the sale of its products appear in the record as Commission's Exhibits Nos. 5, 6, 7 and as respondent's Exhibit No. 4.¹

PAR. 4. In the course and conduct of its business as hereinabove described, respondent secures names and addresses of prospective salesmen by means of advertisements inserted in specialty magazines and in magazines of general circulation. Commission's Exhibits Nos. 13 and 14 are samples of advertisements which have appeared in the past. These advertisements were published in such magazines as "Specialty Salesman", "Capper's Weekly", "American Weekly", "Police Gazette", "Screenland", "Photo Play", "American Legion Weekly", "Success", "Film Fun", "Popular Science", and "Opportunity".

Commission's Exhibits Nos. 13 and 14 display such statements as these: "Big pay"; "Give free merchandise and get cash profits on first call"; "Giving away shirts, ties, underwear, hosiery"; "One shirt free with every three"; "One tie free with every three"; "One suit of underwear free with every three"; "Special free hosiery offers too"; "First calls give big cash profits"; "Accept this free golden invitation to represent Carlton Mills—nationally known men's wear manufacturers—a leader in the direct-to-wearer field". Both of these advertisements bear the words "Carlton Mills, Inc., 79 Fifth Avenue, New York". Respondent after obtaining

¹ Exhibits not published.

such salesmen, forwarded to them in addition to the sample books, various other circulars, from time to time. Samples of such circulars appear in the record as Commission's Exhibits Nos. 9, 10, 11 and 12. Respondent has also published and circulated among its agents a house magazine, a sample of which is Commission's Exhibit No. 15. In the circulars which respondent forwarded to its representatives as mentioned hereinabove were various alleged special offers, and some of these special offers are shown in Commission's Exhibit Nos. 9, 10, 11, and 12. Commission's Exhibit No. 9 bears the statement on the outside as follows: "Important—Carlton Representative—You are hereby authorized to offer your customers Special Free Gift Merchandise—as described within this folder". Within the circular there are described a number of free offers, most of which offer one garment free with an order for three. On the back of the circular there is among other statements the following: "Men! What an opportunity for salesman and customer—you're going to give away thousands and thousands of dollars worth of new fall merchandise *Free*—and your offerings will be at the lowest prices in ten years". Commission's Exhibit No. 10 is a letter of the respondent and is addressed "To Whom It May Concern: This is a letter of authorization to bearer hereof, our authorized representative". This letter states that the respondent is inaugurating a "Special 'Give-Away' Sale" during which respondent would give away hundreds of thousands of dollars worth of Carlton merchandise "Absolutely Free" and contained various offers most of which were for one garment free on each order for three garments. The Commission's Exhibits Nos. 11 and 12 are very similar in substance to the above-mentioned Exhibit No. 10.

PAR. 5. Shirts comparable in quality and workmanship to those which respondent advertises at the price of three for \$4.98 with one shirt free (Comm. Ex. No. 1) sell regularly from 75 cents to \$1 each. Shirts comparable in quality and workmanship to those which respondent advertises at the rate of three for \$5.98 with one shirt free (Comm. Ex. No. 2) sell regularly from \$1 to \$1.55 each. Shirts comparable to other shirts which respondent advertises at the rate of three for \$5.98 with one shirt free (Comm. Ex. No. 3) sell regularly from 75 cents to \$1.50 each. Shirts comparable in quality and workmanship to other shirts which respondent advertises at the rate of three for \$4.98 with one shirt free (Comm. Ex. 4) sell regularly from 50 cents to \$1.25 each.

PAR. 6. The aforesaid representations set out in paragraph 4 hereof were false and misleading and the respondent was not offering any merchandise free but the cost of the allegedly free article

together with a profit on all the articles sold was included in the price which respondent charged, and said representations had the capacity and tendency to mislead and deceive the consuming public and did mislead and deceive a substantial number thereof.

PAR. 7. Respondent, in its sample books and advertising circulars and magazines advertisements, as hereinbefore mentioned, through the use of the words "Mills", "Manufacturers", "Shirt Manufacturers", "Direct-to-wearer", "Direct from mill to wearer", "It has facilities to make and deliver all that it undertakes", "From the raw material to each superbly finished garment Carlton finances the cost—not the profit", "Carlton assumes full command over its supreme custom quality away back at the looms, from that important point, when the first slender thread is finished into fabric, our gigantic resources and facilities control each stage in the designing and manufacture", represents itself as being a textile mill, and represents that, because of this, it sells its merchandise to the consumer at a better price, quality considered, than those of its competitors who reach the consumer through retail distribution.

Respondent, through the use of the words just above referred to and the additional words "Nationally known men's wear manufacturers", "As a recognized manufacturing factor in the 'direct-to-wearer' field it is an outstanding financially dominant leader", "This humanized efficiency makes possible the utmost in quality manufacture—", "Remember Carlton is 100 percent the manufacturer, operating only one overhead and doing nationwide business", "Doesn't it sound logical that the bigger the organization the more economically it can merchandise its products? When the organization happens to be the actual manufacturer of the products and not a jobber, this logic becomes even more significant", further represents itself as being manufacturers of the merchandise which it sells, and represents that because of this, it sells direct to the consumer at a better price, quality considered, than those of its competitors who reach the consumer through retail distribution.

The hosiery, some of the underwear, and some of the outside jackets were purchased in the finished form from the manufacturer thereof and respondent had no connection with or control over the manufacture of such merchandise.

As regards the men's shirts, respondent purchased the cloth for these, most of which was in the finished form but a small amount was purchased unbleached and converted at respondent's direction. Respondent cut the patterns for the shirts in its own workrooms and then the patterns were sent to a shirt factory where the pieces were made into shirts. Respondent furnished the buttons and other

fittings and the manufacturer furnished the thread. These shirts were made according to the specifications furnished by respondent and were made on a contract basis at a specified price per dozen. A manufacturer with his place of business in New Jersey made shirts for the respondent, as well as for other shirt dealers, at a specified price per dozen on specifications furnished by the respondent. He employed all the help in his factories and respondent furnished no additional supervision.

The same situation is true with regard to the neckties which respondent sold.

The respondent does not own, operate, or control any textile mill or any manufacturing establishment, and the respondent is not the maker or manufacturer of the merchandise which it sells. The prices charged by respondent are not limited to a single overhead charge and its representations to that effect are false, misleading and deceptive and have misled and deceived users and customers of respondent into purchasing merchandise from respondent in the belief that such representations were true, that respondent did own or operate textile mills or manufacturing establishments and that respondent was the maker or manufacturer of the merchandise which it sells. There are dealers in men's furnishings who manufacture such merchandise and who sell said merchandise direct to the user or wearer. The representations of the respondent adversely affect the sales of such manufacturers and also adversely affect the sales of dealers in men's furnishings who do not falsely represent themselves as being the manufacturer thereof.

PAR. 8. The respondent immediately prior to the issuance of the complaint herein advertised its men's hosiery as "pure thread silk reinforced with art silk". This hosiery is composed of silk and rayon. The respondent, since the commencement of this action, has changed its advertising regarding its hosiery to "pure thread silk reinforced with lustrous synthetic yarn".

Respondent's hosiery is not composed of pure thread silk but is composed of silk and rayon. The use by respondent of the expressions or words "pure thread silk reinforced with art silk" and "pure thread silk reinforced with lustrous synthetic yarn" is false and misleading when used to describe hosiery composed of silk and rayon, and such use by the respondent misleads and deceives customers and prospective customers of respondent into believing that such hosiery was composed of pure thread silk.

PAR. 9. In its sample book respondent advertised certain of its coats as "Articoat—King of all Sheep Lined Moleskins," other coats and jackets at the "Alaska Lethercoat," and still others as "Storm

King Lethercoat." The coat advertised as "sheep lined moleskin" had been discontinued but when it was sold it was composed of a fabric which had been waterproofed but was not composed of the skin of moles; the coats which were advertised as the "Alaskan Lethercoat" and as "Storm King Lethercoat" were also composed of a fabric which had been waterproofed but which was not composed of leather.

The use of the expressions "Articoat—King of all Sheep Lined Moleskins" and "Storm King Lethercoat" as well as "Alaskan Lethercoat" was false and misleading and had the capacity and tendency to mislead and deceive and did mislead and deceive substantial numbers of the purchasing public into believing that said coats were composed of the skins of moles or leather.

PAR. 10. In its sample books the respondent prior to the issuance of the complaint herein described certain of its shirt materials as (a) Manhattan broadcloth, (b) Columbia broadcloth, (c) Ambassador broadcloth, and (d) Breslin broadcloth. The Manhattan Shirt Co. is a well-known manufacturer of shirts and has manufactured shirts bearing the name "Manhattan" for a great many years, and the word "Manhattan" has become associated in the minds of the public with the product of the Manhattan Shirt Co. The Columbia Shirt Co. has been making shirts for a great many years and has described its product as "Columbia" shirts, and the term "Columbia" has become associated in the minds of the public with the product of the Columbia Shirt Co. The term "Ambassador" has also been used for a long time to describe a shirt manufactured by a particular concern and has become well known as the product of such company. The term "Breslin" has been used for a long time in connection with the sale of shirts made by the Breslin Shirt Co. and has become well known in the minds of the public as the product of that company. The use by respondent of the above terms to advertise shirts sold by respondent would result in confusion and deception in the minds of the purchasing public.

The respondent admitted that the above terms had a value in the sale of shirts but stated that it had discontinued the use of such terms. Respondent's president testified that the labels in the shirts bore the name Carlton, but on further questioning stated that the purchaser ordered his shirts from the sample book, paying a deposit to the salesman and paying the balance of the purchase price upon delivery by the post office, and that he would not see the label in the shirts which he bought until after delivery to him and the full purchase price had been paid.

The Commission finds that the terms "Manhattan", "Columbia", "Ambassador", and "Breslin" as used by the respondent were false and misleading, that the manner in which the said terms were used by respondent would lead the consuming public to believe that the shirts were either made by the manufacturers of such trade marked shirts or that the material for respondent's shirts was furnished by the manufacturers of such shirts.

PAR. 11. The companies hereinbefore mentioned who have been manufacturing and distributing such trade marked shirts and other manufacturers who distribute shirts under their own trade mark and manufacturers whose shirts are sold to the public without a trade mark of the manufacturer are likely to be injured and have been injured by the respondent's use of the terms "Manhattan", "Columbia", "Ambassador", and "Breslin." Respondent's use of such terms is also likely to injure and has injured those manufacturers making men's shirts who do not indulge in practices such as those in which respondent has indulged, and is likely to injure and has injured dealers selling shirts bearing well-known trade-marked names as well as dealers selling shirts which bear trade-marked names not so well known.

PAR. 12. The foregoing acts, practices, and representations and each of them made and done by the respondent have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's products and have a tendency to injure to a substantial extent competitors of respondent by unfairly diverting trade from such competitors of the respondent.

PAR. 13. The complaint in paragraph 7 thereof, charged the respondent with advertising exhausted patterns and substituting patterns of its own selection on orders therefor. No evidence was offered in support of this charge of the complaint.

CONCLUSION

The acts and practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce, constituting a violation 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 respondent, briefs and oral argument on behalf of both the counsel for the Commission and respondent and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

It is now ordered, That the respondent, Carlton Mills, Inc., a corporation, its officers, agents, and employees in connection with the advertising, offering for sale and sale and distribution by it in interstate commerce and in the District of Columbia, of the various products in which it deals, forthwith cease and desist from:

(1) Directly or indirectly representing through or by phrases such as "one shirt free with every three", "one tie free with every three", "one suit of underwear free with every three", "one pair of socks free with every three", or in any other way that in connection with or in combination with the purchase from it by its customers or prospective customers of three or more shirts, suits of underwear, ties or pairs of socks or any other article in which it deals, it is giving away or will give away free of charge a shirt, a tie, a suit of underwear or a pair of socks or any other article of merchandise, until and unless respondent actually gives away a shirt, tie, suit of underwear, a pair of socks or such other article of merchandise without including the cost thereof in the selling price of the articles sold.

(2) Directly or indirectly representing through and by the use of the words "manufacturer" and/or the phrases "direct from mill to wearer", "from the raw material to each superbly finished garment Carlton finances the cost not the profit", "Carlton assumes full command over its supreme quality away back at the looms", "nationally known men's wear manufacturer", "100 percent the manufacturer", or in any other way that it is the manufacturer, weaver or knitter of products sold and distributed by it, until and unless said Carlton Mills, Inc., actually owns and operates or directly and absolutely controls factories or mills wherein are made articles by it sold or offered for sale.

(3) Using the corporate name, "Carlton Mills, Inc.," or any other corporate or trade name which includes the word "Mills" or any other name indicating that it is a knitter, weaver or manufacturer, unless and until said Carlton Mills, Inc., actually owns and operates or directly and absolutely controls factories or mills wherein are made

articles by it sold or offered for sale or unless and until said Carlton Mills, Inc., shall insert and use also the words "not weavers, knitters or manufacturers" or words of similar import, in immediate conjunction with its title, corporate name, trade name, or other designation and in letters equally legible and conspicuous when said title, corporate name, trade name or other designation is used on stationery, letterheads, containers, advertising matter or otherwise.

(4) Representing that hosiery made of silk and rayon but not of pure silk thread is pure thread silk.

(5) Representing by the use of the terms "sheep lined moleskins", "Alaskan Lethercoat" or "Storm King Lethercoat" or by the use of other terms of similar import or in any other way, that its fabric coats are made of moleskin or leather.

(6) Using the names "Manhattan", "Columbia", "Ambassador", or "Breslin", or any other trade-marked name to describe shirts made for respondent by manufacturers other than the owner of such trade-marked names.

It is further ordered, That the said respondent within 60 days from and after the day 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.



ORDERS OF DISMISSAL

NATIONAL LEATHER & SHOE FINDERS' ASS'N, ET AL.¹ Complaint, March 31, 1932.² Order, June 19, 1933. (Docket 1263.)

Charge: Combining and conspiring to discourage, stifle, and suppress competition in price and otherwise, in the sale and distribution of shoe findings and in shoe repair service to the general public; to confine the commerce involved to so-called legitimate channels and dealers, and to fix uniform and enhanced prices for shoe findings in the trade and for shoe repairing to the general public.

Dismissed, after answers and trial, by the following order:

This matter coming on for final determination and the Commission having considered the briefs of counsel in support of the complaint and of counsel for the respondents, having heard oral argument, having considered a stipulation of the facts and the pleadings herein and being fully advised in the premises,

It is hereby ordered, That this proceeding be and the same hereby is dismissed.

Appearances: *Mr. Eugene W. Burr* for the Commission; *Lehmann & Lehmann*, of St. Louis, Mo., for respondents.

D. STEMPEL, M. STEMPEL, and H. STEINBERG, copartners doing business as PLAZA HAT Co. Complaint, January 20, 1931. Order, July 7, 1933. (Docket 1900.)

Charge: Selling remade product as and for new, in connection with sale of second hand, renovated and remade hats.

Dismissed by the following order:

This matter coming before the Commission upon the complaint issued January 20, 1931, and it appearing that efforts were made to

¹ Respondents in the case, not specified above, and joined by the amended and supplemental complaint (following order dismissing certain respondents included in the original complaint, without prejudice, as in said order specified), were:

David T. Feldelson, John L. Steffan, Rudolph Kaplan, D. R. Stanley, Earl F. Berg, H. J. Raridan, Wm. H. Potts, Geo. A. Knapp, and A. V. Fingulin, individually and as president, first vice president, second vice president, third vice president, fourth vice president, fifth vice president, treasurer, secretary-assistant treasurer, and as editor of the periodical "Shoe Repair Service", respectively of said respondent association;

John L. Steffan, individually and as chairman of the executive committee of said association, H. E. Sternberg, Wm. H. Bremer, Jake S. Brall, Wm. A. Loewenberg, Herbert J. Gaensien, Chas. A. Workman, Edw. W. Schloemen, Jos. H. Deacon, Carl L. Gaver, Ray C. Shaffer, John M. Kipp, and Glen R. Driscoll, individually and as executive committeemen of said association.

² Amended and supplemental.

serve the complaint upon respondents by registered mail and by personal service, which efforts were unsuccessful due to the fact that the respondents could not be located, and it further appearing after investigation that the respondents have gone out of business and that all stock and fixtures were sold at auction on or about January 8, 1931, pursuant to an assignment for the benefit of creditors made by respondents under court proceedings in the city of New York, State of New York, and the Commission being fully advised in the premises,

It is hereby ordered, That the complaint against the above named respondents be and the same is hereby dismissed without prejudice for the reason that respondents have gone out of business.

Appearances: *Mr. G. Ed. Rowland* for the Commission.

D. J. WALKER and GRACE H. WALKER, copartners, doing business as WALKER REMEDY Co. Complaint, March 1, 1932. Order, July 17, 1933. (Docket 2013.)

Charge: Advertising falsely or misleadingly as to nature and results of product, in connection with the sale of alleged poultry remedies.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. PGad B. Morehouse* for the Commission; *Pike, Sias, Zimmerman & Butler* of Waterloo, Iowa, and *Davies, Jones, Beebe & Busick*, of Washington, D.C., for respondents.

GUARANTEE VETERINARY Co., a common law trust, and George L. Owens, individually and as managing trustee of Guarantee Veterinary Co. Complaint, January 12, 1932. Order, July 18, 1933. (Docket 1992.)

Charge: Advertising falsely or misleadingly as to composition and results of product, and official or government approval or endorsement, in connection with the manufacture and sale of medicated salt blocks.

Dismissed by the following order:

This matter having come on to be heard by the Commission upon complaint served January 15, 1932, charging the above respondents with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of the Act of September 26, 1914, 38 Stat. 719, and it appearing to the Commission that the respondent George L. Owens departed this life on the sixth day of January, 1933, and that Mrs. George L. Owens, the surviving widow, as managing trustee, has entered into a stipulation on behalf of the Guarantee Veterinary Co., a common law trust, with the Federal Trade Commission, which said stipulation has heretofore, by the direction of this Commission, been approved, providing that the said

surviving respondent, Guarantee Veterinary Co., will cease and desist from the unfair practices in said complaint charged, and the Commission having considered the same and being fully advised in the premises,

It is now ordered, That the aforesaid complaint be, and the same is, hereby dismissed.

Appearances: *Mr. PGad B. Morehouse* for the Commission.

AMERICAN BOX BOARD CO., ET AL.¹ Complaint, May 23, 1932.² Order, October 14, 1933. (Docket 2026.)

Charge: Combining and conspiring to restrict competition in purchase of supplies, in connection with an undertaking entered into by seven corporations and an individual, with offices and places of business in the midwest, for the purpose and with the effect of fixing and maintaining depressed uniform prices for waste paper purchased by them for manufacture of their paper board and paper-board products.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Follansbee, Shorey & Schupp*, of Chicago, Ill., for Eddy Paper Corporation and *Mr. Charles A. Vilas*, of New York City, and *Mr. W. Parker Jones*, of Washington, D.C., for all other respondents, along with *Sterns & Kleinstuck* (attorneys for receiver) for Western Board & Paper Co.³

RED BAND CO., INC. Complaint, March 22, 1932. Order, November 4, 1933. (Docket 2021.)

- Charge: Advertising falsely or misleadingly as to qualities of product, and ostensibly fair, competent and disinterested competitive tests of product, in connection with the sale of flour.

Dismissed, after answer and trial, by the following order:

The above entitled proceeding coming on for consideration on the complaint of the Commission, answer of respondent, and the evidence and it appearing that since the evidence was taken the respondent has sold its business and assets and has been dissolved as a corporation, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Minor, Gatley & Drury*, of Washington, D.C., for respondent.

¹ Other respondents in this case include American Coating Mills, Eddy Paper Corporation, Mac Sim Bar Paper Co., Michigan Carton Co., Morris Paper Mills, Sutherland Paper Co., National Biscuit Co., and A. F. Meisterhelm.

² Amended.

³ Not a party in amended complaint, original complaint having been dismissed as to said respondent.

MOSBY MEDICINE Co. Complaint, February 5, 1931. Order, November 10, 1933. (Docket 1911.)

Charge: Securing and using testimonials misleadingly and advertising falsely or misleadingly as to nature and results of product; in connection with the manufacture and sale of a proprietary medicine.

Dismissed, after answer, for the reason that the "respondent corporation has gone out of business and has been dissolved."

Appearances: *Mr. Harry D. Michael* for the Commission; *Mr. Eugene L. Culver*, *Mr. Stephen A. Day*, and *Mr. C. O. Rose*, all of Washington, D.C., for respondent.

SCHOLL MANUFACTURING Co., INC. Complaint, June 24, 1933. Order, December 12, 1933. (Docket 2107.)

Charge: Advertising falsely or misleadingly as to history, nature and results of product; in connection with the manufacture and sale of foot comfort preparations and appliances.

Dismissed, after answer, by the following order:

In the above entitled matter there were this day submitted for the consideration of the Commission:

(a) Stipulation as to the facts dated the — day of September, 1933, by and between the Commission's chief counsel and the respondent in which the respondent after making certain admissions of fact declares that it has discontinued all of the representations described in the complaint herein and described in said stipulation, and that it will not again make these or similar representations, or representations of like import directly or indirectly in its advertising of, or in the sale or promotion of the sale of, its Zino pads;

(b) A motion of the respondent that all of the practices complained of having been abandoned the complaint be dismissed.

The Commission being fully advised in the premises,

It is ordered:

(1) That said stipulation be and is hereby approved.

(2) That, it appearing that the respondent abandoned the practices described in the complaint herein before said complaint was issued and in said stipulation has promised not to resume the same, said complaint be and is hereby dismissed without prejudice.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Vogelsang, Brown, Cram, Feely & Finney*, of Washington, D.C., for respondent.

STEELCOTE MANUFACTURING Co. Complaint April 6, 1932. Order, December 21, 1933. (Docket 2025.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of paints, enamels, varnishes, lacquers, and similar products.

Dismissed, after answer and trial, without assignment of reasons. Appearances: *Mr. James M. Brinson* for the Commission; *Mr. Jesse W. Barrett*, of St. Louis, Mo., for respondent.

EFANSEE HAT CO., INC. Complaint, June 6, 1932. Order, January 23, 1934. (Docket 2050.)

Charge: Selling reconditioned product as and for new.

Dismissed, for the reason that respondent corporation has been dissolved.

Appearances: *Mr. G. Ed. Rowland* for the Commission.

HAMMER LABORATORIES, INC. Complaint, May 31, 1932. Order, February 17, 1934. (Docket 2041.)

Charge: Advertising falsely or misleadingly as to results or qualities of products; in connection with the manufacture and sale of various purported radium products.

Dismissed, after answer and trial, for the reason that "the respondent corporation has been dissolved."

Appearances: *Mr. Edward L. Smith* for the Commission.

OLD COLONY CANDY CO. Complaint, May 2, 1930. Order, March 5, 1934. (Docket 1814.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Dismissed, after answer, by the following order:

In the above-entitled matter there were submitted for the consideration of the Commission:

(a) Letter from the former attorney for the respondent, dated February 15, 1934, stating that this company was liquidated in bankruptcy by proceedings #16411 in bankruptcy in the United States District Court for the Western District of Pennsylvania on an involuntary petition dated June 16, 1931, and that the company has been out of existence since then, and further stating that there is no such company now existing and that he has no knowledge of the whereabouts of the former officers of that company.

(b) Letter from the clerk of the United States District Court for the Western District of Pennsylvania, dated February 20, 1934, stating that an involuntary petition was filed against the respondent on June 16, 1931, and that an offer of composition was made and on July 13, 1931, an order was made confirming the composition absolutely, and directing the Clerk to make distribution.

The Commission being fully advised in the premises,

It is now ordered, That the said complaint be and the same is hereby dismissed for the reason that the respondent was adjudicated a bankrupt and is no longer in business.

Appearances: *Mr. Henry C. Lank* and *Mr. G. Ed. Rowland* for the Commission; *Mr. Maurice L. Avner*, of Pittsburgh, Pa., for respondent.

NUROSOL LABORATORIES, INC., CHARLES GOLDBLATT and MAURICE GOLDBERG, individually and as its officers, NUROSOL LABORATORIES, INC., CHARLES GOLDBLATT and MAURICE GOLDBERG, trading under and by the firm name and style of RENESOL LABORATORIES, INC. Complaint, January 27, 1933. Order, April 13, 1934. (Docket 2088.)

Charge: Operating ostensibly independent competitive enterprises for sale of product, advertising falsely or misleadingly as to history, nature, results, and professional indorsement of product, and using misleading corporate name and misrepresenting business status; in connection with the preparation or compounding of a treatment for epilepsy.

Dismissed, after stipulation, by the following order:

Whereas, on the 27th day of January, 1933, the Commission issued its complaint herein against the above-named respondents, and whereas, the chief trial examiner on September 19, 1933, submitted to the Commission a stipulation approved by him wherein the respondent Nurosol Laboratories, Inc., stipulated and agreed to cease and desist from the use of certain unfair methods of competition in interstate commerce, said unfair methods of competition including and embracing those charged in the complaint herein, together with a memorandum dated September 19, 1933, wherein the chief trial examiner called attention to the fact that the names of respondents, Charles Goldblatt and Maurice Goldberg, named in the complaint herein, had been deleted from said stipulation for the reason that there was no evidence that said respondents made use of the unfair methods of competition set forth in the stipulation, and whereas, the Commission on the 20th day of November, 1933, approved and accepted said stipulation and whereas, the form of order herein has been determined, now therefore,

It is ordered, That the complaint herein be and the same hereby is dismissed for the reasons heretofore recited.

Appearances: *Mr. James M. Brinson* for the Commission; *Nathan D. Shapiro & Brothers*, of Brooklyn, N. Y., for respondents.

STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

173. **False and Misleading Advertising—Clothing.**—Respondent, a corporation, engaged in the business of selling men's, women's, and children's clothing and accessories thereto and distributing same in interstate commerce, and in competition with other corporations, individuals, partnerships, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in its catalogs or other advertising matter circulated in interstate commerce, agreed to cease and desist from: The use of the word "wool" or "woolen" either independently or in connection or conjunction with any other word or words so as to import or imply that the product is wool, when such is not the fact. In the event the product is composed in substantial part of wool and the word "wool" or "woolen" is used as descriptive thereof, then in such case the said word "wool" or "woolen" shall be printed so as to clearly indicate that the product is not composed wholly of wool but is composed of a material or materials other than wool; the use of the word "pongee" either independently or in connection or conjunction with any other word or words so as to import or imply that the product is silk, when such is not the fact. In the event the product is composed in substantial part of silk, the product of the cocoon of the silkworm, and the word "pongee" is used as descriptive thereof, then in such case the said word "pongee" shall be accompanied by some other word or words printed in type

¹ For false and misleading advertising stipulations effected through the Commission's special board, see p. 480, *et seq.*

² 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, June 19, 1933, to Apr. 23, 1934, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 1064, inclusive—may be found in vols. 10 to 17 of the Commission's decisions.

equally as conspicuous as that in which the word "pongee" is printed so as to clearly indicate that the product is not composed wholly of silk but is composed of a material or materials other than silk; the use of the word "silk" either independently or in connection or conjunction with any other word or words so as to import or imply that the product is silk, when such is not the fact. In the event the product is composed in substantial part of silk, the product of the cocoon of the silkworm, and the word "silk" is used as descriptive thereof, then in such case the word "silk" shall be 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 clearly indicate that the product is not composed wholly of silk but is composed of a material or materials other than silk; the use of the word "wolf" in conjunction with the word "Manchurian", or any other word, when the skin so described is not the skin of a wolf.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue.

This release is to be substituted for and take the place of former release no. 173. (Feb. 7, 1934.)

787. Disparaging Competitors' Products and False and Misleading Advertising—Stone Burial Vaults.—Respondent, a corporation, engaged in the quarrying of stone and the fabrication of stone burial vaults and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein:

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from advertising or otherwise offering to pay a compensation or reward for the disinterment of burial vaults of competitors; acquiring, keeping on hand, exhibiting, and displaying for the purpose and with the effect of falsely representing in any way the burial vaults of competitors; soliciting, securing, and/or availing itself of the cooperation of superintendents of cemeteries and cemetery associations for the conducting of campaigns involving the making of untrue statements against its competitors' products; exhibiting the products of competitors, or photographs thereof, either alone or accompanied by printed matter, in such a way as to falsely represent the products of competitors; falsely representing, either in advertisements or advertising matter, in letters, or by any other means, the value of guaranties given by its competitors on their products; making statements

falsely representing the products of competitors, in advertisements or advertising matter, in letters, or by means of posters, photographs, and/or exhibits of any kind or character.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue.

This release is to be substituted for and take the place of former release of same number. (Mar. 28, 1934.)

1065. False and Misleading Trade Names, Brands, and Advertising—Coffee.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of coffee 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 "import" as a part of, or in connection with the trade name under which he carries on his business; and from the use of the word "import" in advertisements or advertising matter, or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said respondent imports the products, or any part thereof, which he sells and distributes in interstate commerce, when such is not the fact; the use of statements and representations to the effect that said respondent is a roaster of coffees, or that he roasts the coffees which he sells fresh the same day that the order for the merchandise is received, or the same day that the products are shipped, when such is not the fact; advertising, selling, and distributing his products in interstate commerce under different trade names or brands in such a way as to hold out and represent to customers and prospective customers that such products are of different qualities and values, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (June 26, 1933.)

1066. False and Misleading Trade Name and Advertising—Food-Flavoring Products.—Respondents, copartners, engaged in the manufacture of food-flavoring products and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged in the sale and distribution of similar products, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondents agreed to cease and desist forever from the use of the word "extract" as a part of, or in connection with their co-

partnership or trade name, in advertisements or advertising matter, circulars, price lists, or letters circulated in interstate commerce; and from the use of the word "extract" either independently or in connection or conjunction with any other word or words, in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said respondents manufacture or deal in extracts, when such is not the fact; and the use of the word "extracts" as descriptive of the products which they advertise, sell, and distribute in interstate commerce; and from the use of the word "extracts" either independently or in connection or conjunction with any other word or words in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so referred to are extracts, are products in concentrated form of fruits or the juices thereof, 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. (July 14, 1933.)

1067. **False and Misleading Advertising—Refrigerators.**—Respondent, a corporation, engaged in the manufacture of refrigerators 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 "metal" or "steel" either independently or in connection or conjunction with any other word or words, in its advertisements or advertising matter circulated in interstate commerce, to designate or describe products not consisting of all steel or all metal, but if the words "steel" or "metal" are used by said respondent to describe its refrigerators not consisting of all steel or all metal, then such words shall be accompanied by some other word or words printed in type equally as conspicuous as those in which the words "steel" or "metal" are printed so as to indicate clearly that the product is not all steel or all metal, and that will otherwise properly designate or describe said product; the use of the words "porcelain" or "synthetic porcelain" 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 is manufactured 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. (July 19, 1933.)

1068. False and Misleading Brands or Labels and Advertising—Rolled Oats.—Respondent, a corporation, engaged in the manufacture of several types of rolled oats 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 selling and distributing in interstate commerce products packaged in such a way as to have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that such packages contain an amount or quantity of oats other or greater than is actually placed in said containers, and from the use of the familiar 20-ounce size oat containers in such a way as to confuse, mislead, or deceive purchasers into the belief that the said packages contain 20 ounces of such product, unless, when a 20-ounce size container is used to package oats of less quantity or amount than 20 ounces, in which case the actual quantity or amount of said product packed in said container shall be printed thereon in type or figures equally as conspicuous as any lettering on the label used, so that it will clearly appear that the package does not contain 20 ounces of said product and/or that the said package contains less than 20 ounces of said product.

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. (Aug. 4, 1933.)

1069. False and Misleading Brands or Labels, Price, and Advertising—Flavoring Products.—Respondent, an individual, engaged in the manufacture or compounding of flavoring and other products 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 advertising or in any way marking his products with fictitious or exaggerated prices and from making any false, fictitious, or misleading statements or representations concerning the value or the prices at which said products, or any of them, are sold or are intended to be

sold in the usual course of trade; making any false, fictitious, or misleading statements or representations concerning the volume of his business, or concerning the scale of his production, and from the use of such statements and representations as "mass production" or any other similar expressions having the tendency or capacity to confuse, mislead, or deceive customers into the belief that his production is upon a large scale, when such is not the fact; the use on labels and/or in advertisements or advertising matter of the words "Compound vanilla extract" to designate and describe a product which is not a compound of vanilla extract only, but which is a compound of vanilla extract with other flavoring ingredients; or unless, if the words "Compound vanilla extract" are used, and the product so designated and described is composed in substantial part of ingredients other than vanilla extract, then such fact shall be set forth on the labels or in his advertisements and advertising matter in type equally as conspicuous as those in which the words "compound vanilla extract" appear.

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. (Aug. 4, 1933.)

1070. False and Misleading Trade Name and Advertising—Proprietary Products.—Respondents, copartners, engaged in the sale and distribution in interstate commerce of proprietary 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 said products, or either of them, in interstate commerce, agreed to cease and desist from the use in advertising matter distributed by them or either of them in interstate commerce, of any and all statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products, or either of them, are or is, or possess or possesses such therapeutic value so as to be an adequate treatment or remedy for disorders such as ulcers of the stomach and gastritis, and/or that the use of said products, or either of them, will cure such disorders. The said respondents also agreed to cease and desist from the use of the word "laboratories" as part of, or in connection or conjunction with a trade name or trade names used by them, or by either of them, in soliciting the sale of and selling said products in interstate commerce so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that said respondents

own, operate, and control the laboratory in which said products are made or compounded, 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. (Aug. 16, 1933.)

1071. False and Misleading Brands or Labels and Advertising—Hair and Scalp Preparations.—Respondent, an individual, engaged in the manufacture of hair and scalp preparations 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 the use of any and all statements and representations on labels affixed to said product, or in advertisements or advertising matter of whatsoever character 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 will restore hair which has turned gray to its original natural color, or that the said product will impart color to white hair except in the sense that it will dye hair, or that the said product will supply certain vital elements to the scalp or cause the nerve cells beneath the roots of the hair to awaken and function or stimulate the pigment cells so as to force the original pigment fluid back into hair that was hollow, empty, and gray and thus restore the original color, when such are not the facts. The said respondent also agreed to cease and desist from the use of statements and representations to the effect that the said product will prevent gray hair which has been treated with the said product from showing gray at the roots after it grows out, or that the said product will stop or eliminate dandruff or falling hair, or that it is properly represented to be a hair-health product, when such are not the facts.

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. (Aug. 18, 1933.)

1072. False and Misleading Brands or Labels—Bottles and Flasks.—Respondent, a corporation, engaged in the manufacture of glass, flasks, and bottles 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 "one pint" as a mark or brand blown, impressed, or stamped upon the bottles or flasks manufactured, sold, and distributed by it in interstate commerce, when such products have a capacity other than that indicated; and from the sale and distribution in interstate commerce of bottles or flasks of the approximate size and shape of full size standard containers, but whose actual capacity is less than a pint or 16 ounces, marked, stamped, impressed, or branded with any words, marks, or figures which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said containers are of full pint capacity, 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. (Aug. 25, 1933.)

1073. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of 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 his products, or on labels or boxes distributed in interstate commerce, to describe or designate products which are not actually throw-outs; and from stating or representing, directly or indirectly, that any of his products are throw-outs, or factory throw-outs, 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. (Aug. 25, 1933.)

1074. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondents, copartners, engaged in the sale and distribution of cigars 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 words "throw-outs" or "factory throw-outs" either independently or in connection or conjunction with any other word or words as a trade brand or label for their said products, or otherwise to represent or designate such of their products as are not actually throw-outs, and from stating and representing, directly or indirectly, that their said products are throw-outs, when such is not the fact. The said respondents also agreed to cease and desist from the use on their labels of the words, figures, or phrases "10¢ factory throw-outs" or the price representation "10¢" either independently or in connection or conjunction with the words "factory throw-outs" and/or "5¢ each" or with any other word or words, phrase, or statement 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 throw-outs when such is not the fact, or that the price of said products has been reduced when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 10 cents each, 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. (Aug. 25, 1933.)

1075. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use 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 brand or label for said products or otherwise to represent or designate such of his products as are not throw-outs, when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels of the words and figures "10¢, 2 for 25¢, and 15¢ sizes" and "off shapes, off colors" or either of them either independently or in connection or conjunction with the words and figures "5¢ fresh factory throw-outs" or "fresh factory throw-outs", or with any other word or words, phrase, or statement 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 throw-outs, when such is not the fact, or that the price of said products has been reduced when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 10 cents, or 15 cents each, or at 2 for 25 cents, 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. (Aug. 25, 1933.)

1076. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondents, copartners, engaged in the manufacture of cigars, and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged in the sale and distribution in interstate commerce of similar products, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their product in interstate commerce, 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 their products or on their labels distributed in interstate commerce, to describe or designate products which are not actually throw-outs; and from stating or representing, directly or indirectly, that any of their products are throw-outs, or factory throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; the use of the words, figures, or phrases "off colors and shapes" and/or "straight 5¢ straight" or either of them, either independently or in connection or conjunction with any other word or words, phrase, or statement, in such a way 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 throw-outs, when such is not the fact; that the price of said products has been reduced, when such is not the fact; or that said products are of a quality usually and regularly sold and offered to be sold at 5 cents each, 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. (Aug. 25, 1933.)

1077. **False and Misleading Trade Name and Brands or Labels—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 its products in interstate commerce, 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 his products, or on his boxes or labels distributed in interstate commerce, to describe or designate products which are not actually throw-outs; and from stating or representing, directly or indirectly, that any of his products are throw-outs, or factory throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products, regularly and usually offered for sale and sold at that price; or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; and from the use of the words, figures, and phrases "each 5¢ each" and/or "off colors and shapes" either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 5 cents each, 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. (Aug. 25, 1933.)

1078. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of said products in commerce between and among various States of the United States 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 said products in interstate commerce, agreed to cease and desist 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 brand or label for his said products, or otherwise to represent or designate such of his products as are not throw-outs, and from stating and representing, directly or indirectly, that his said products are throw-outs, when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels or otherwise of the words, figures, and phrases "2 for 25¢ sizes" and "off colors and shapes", or either of them, either independently or in connection or conjunction with the words "factory throw-outs" or with any other word or words, phrase, or statement 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 2 for 25 cents, when such is not the fact. The said respondent also agreed to cease and desist from the use on his said labels of the words and figures "now 2 for 5¢" or any similar slogan or phrase of equivalent meaning 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 price of the products referred to has been recently reduced, 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. (Aug. 25, 1933.)

1079. **False and Misleading Trade Name and Brands or Labels—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" 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 otherwise to designate or represent such of its products as are not throw-outs; and from stating and representing, directly or indirectly, that its

products are throw-outs, when such is not the fact; the use of the words, figures, or phrases "10¢ quality cigars", "10¢ straight", and/or "regular 10¢ cigars slightly imperfect", or either of them, either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the price of said products has been recently reduced, when such is not the fact, and/or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each, 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. (Aug. 25, 1933.)

1080. False and Misleading Trade Name and Brands or Labels—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 product in interstate commerce, 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 brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs, and from stating and representing, directly or indirectly, that his products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; the use of the words, figures, or phrases "10¢ and 2 for 25¢ sizes", "each (5¢) each", and/or "off colors and shapes", or any of them either independently or in connection or conjunction with any other word or words, phrase, or statement, in such a way 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 throw-outs, when such is not the fact; that the price of said products has been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 5 cents each, at

10 cents each, or at the rate of 2 for 25 cents, 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. (Aug. 30, 1933.)

1081. False and Misleading Trade Name and Brands or Labels—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 product in interstate commerce, agreed to cease and desist forever from the use of the words "throw-out" or "factory throw-outs" either independently or in connection or conjunction with any other word or words, as a trade brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs; and from stating and representing, directly or indirectly, that his products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been reduced, when such is not the fact; the use of the words, figures, and phrases "10¢ and 2 for 25¢ sizes", "each (5¢) each", and/or "off colors and shapes" or any of them either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such as not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each, or at 2 for 25 cents each, or at 5 cents each, 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. (Aug. 30, 1933.)

1082. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate com-

merce, 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 "throw-outs" or "factory throw-outs" either independently or in connection or conjunction with any other word or words as a trade brand or label for his said products, or otherwise to represent or designate such of his products as are not actually throw-outs, and from stating and representing directly or indirectly that his said products are throw-outs, 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. (Aug. 30, 1933.)

1083. False and Misleading Trade Name and Brands or Labels—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 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 brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs; and from stating and representing, directly or indirectly, that such products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or any similar words which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, when such is not the fact; the use of the words, figures, or phrases "10¢ and 2 for 25¢ sizes" and/or "off colors and shapes" or either of them, either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs when such is not the fact, that the price of said products has been reduced, when such is not the fact, or that said products are of a

quality usually and regularly sold and offered to be sold at 10 cents each, or at 2 for 25 cents, 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. (Aug. 30, 1933.)

1084. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from placing the trade name or brand of "factory throw-outs" on the containers in which said product so manufactured were packed and distributed by him in interstate commerce; placing upon the containers in which said products are packed and distributed in interstate commerce labels displaying the legend "now 2 for 5¢" or any similar phrase or statement of equivalent meaning, to designate or represent products regularly and usually offered for sale at that price, or any similar words which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, when such is not the fact; the use of the words, figures, or phrases "10¢ and 2 for 25¢ sizes" and/or "off colors and shapes", or either of them, either independently or in connection or conjunction with any other word or words, phrase or statement, in such a way 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 throw-outs, when such is not the fact, that the price of said products has been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each, or at 2 for 25 cents, 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. (Aug. 30, 1933.)

1085. False and Misleading Trade Name and Brands or Labels—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 corporation likewise engaged, entered into the following agree-

ment 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 "throw-outs" either independently or in connection or conjunction with any other word or words as a trade brand or label for his said products, or otherwise to represent or designate said products as are not throw-outs, and from stating and representing, directly or indirectly, that said products are throw-outs, when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels of the words and figures "5¢ throw-outs" either independently or in connection or conjunction with "Every cigar in this box is guaranteed to be made of strictly all imported long filler. Because of slight imperfections which do not affect the smoking quality—are classed as seconds. Do not mistake the quality of this merchandise with other packages of a similar nature" 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that the said products were manufactured for the purpose and with the intent of being sold at 5 cents each, 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. (Aug. 30, 1933.)

1086. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual engaged in the manufacture of cigars and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, 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 his products, or on labels distributed in interstate commerce, to describe or designate products which are not actually throw-outs; and from stating or representing, directly or indirectly, that any of his said products are throw-outs, when such is not the fact; the use of the words and figures "5¢ and 10¢ * * * 2 for 5¢" or of 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 price of the products referred to has been reduced, when such is not the fact, or 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 each, or 10 cents each, 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. (Aug. 30, 1933.)

1087. False and misleading Trade Name and Brands or Labels—Cigars.—Respondents, copartners engaged in the manufacture of cigars and in the sale and distribution of said 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 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 brand or label for their products, or otherwise to designate or represent such of their products as are not throw-outs, and from stating and representing, directly or indirectly, that their products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced when such is not the fact; the use of the words, figures, or phrases "10¢, 2 for 25¢ cigars", "off shapes and sizes", and/or "5¢" or any of them either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, or that the price of said products has been reduced when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each, at 2 for 25 cents, or at 5 cents, 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 of the facts

may be issued in evidence against them in the trial of the complaint which the Commission may issue. (Aug. 30, 1933.)

1088. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the sale and distribution 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, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist 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 brand or label for said products, or otherwise to represent or designate such of his said products as are not throw-outs, and from stating and representing, directly or indirectly, that said products are throw-outs, when such is not the fact. Respondent also agreed to cease and desist from the use on his labels or otherwise of the words, figures, or phrases "off colors and shapes" and "straight 5¢ straight", or either of them, either independently or in connection or conjunction with the words "factory throw-outs", or with any other word or words, phrase, or statement 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 5 cents each, when such is not the fact. The said respondent also agreed to cease and desist from the use on said labels of the statement "now 2 for 5¢", 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 price of the products referred to has been recently reduced, 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. (Aug. 30, 1933.)

1089. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of said products in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "throw-outs" or "factory throw-outs" either independently or in connection or conjunction with any other word or words as a trade brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs; and from stating and representing directly or indirectly that his products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢", or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale at that price, and which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; the use of the words, figures, or phrases "10¢ and 2 for 25¢ sizes" "each 5¢ each", and/or "off colors and shapes", or any of them, either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each, or at 5 cents each, or at the rate of two for 25 cents, 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. 11, 1933.)

1900. False and Misleading Trade or Corporate Name—Wall Paper.—Respondents, copartners, engaged in the sale and distribution in interstate commerce of wall paper, 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 agreed to cease and desist forever from the use of the word "mills" as a part of their trade name and from stating or representing that they manufacture the products which they sell, and from making any statement or representation so as to confuse, mislead, or deceive purchasers into the belief that they own, control, or operate any mill or factory wherein said products are manufactured when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this stipulation as to the facts

may be used in evidence against them in the trial of the complaint which the Commission may issue. (Sept. 11, 1933.)

1091. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, a corporation, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "throw-outs" either independently or in connection or conjunction with the word "factory", or with any other word or words as a trade brand or label for said products, or otherwise to represent or designate such of its products as are not throw-outs, and from stating and representing, directly or indirectly, that its said products are throw-outs, when such is not the fact. The said corporation also agreed to cease and desist from the use of the words, statements, or phrases "off colors and shapes" and "straight 5¢ straight" or either of them either independently or in connection or conjunction with the words "factory throw-outs" or with any other word or words on its labels 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold at 5 cents straight, when such is not the fact. The said corporation also agreed to cease and desist from the use on its labels of the phrase or statement "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning 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 price of the products referred to has been recently reduced, 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. (Sept. 11, 1933.)

1092. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the follow-

ing 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 "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 their products, or otherwise to designate or represent such of their products as are not throw-outs; and from stating and representing, directly or indirectly, that their products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any other similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; the use of the words and figures "straight 5¢ straight" or of any other similar phrase or statement of equivalent meaning which may have the tendency or capacity 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, 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. (Sept. 11, 1933.)

1093. False and Misleading Trade Name and Brands or Labels—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 from the use of the words "factory seconds" either independently or in connection or conjunction with any other word or words as a brand or label for said products, or otherwise to represent or designate such of his products as are not factory seconds, and from stating and representing, directly or indirectly, that said products are "factory seconds" when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels or otherwise of the words, figures or phrase "off color" or "packed regardless of size or color" and "5¢ and 10¢ sizes" or either of them either independently or in connection or conjunction with the words "factory seconds", or with

any other word or words, phrase or statement 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 factory seconds, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 5¢ or 10¢ each, when such is not the fact. The said respondent also agreed to cease and desist from the use on said labels of the statement "now 2 for 5¢", so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the price of the products referred to has been recently reduced, 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. 11, 1933.)

1094. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution of said 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 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 brand or label for their products, or otherwise to designate or represent such of their products as are not throw-outs; the use of the words and figures "now 2 for 5¢", or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been reduced, when such is not the fact; the use of the words, figures, or phrases "10¢ and 5¢ sizes" and/or "off colors and shapes", or either of them, either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are throw-outs, when such is not the fact; that the price of said products has been reduced when such is not the fact, and/or that said products are of a quality

usually and regularly sold and offered to be sold at 10 cents each, or at 5 cents each, 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. (Sept. 11, 1933.)

1095. False and Misleading Brands or Labels—Gloves.—Respondent, a corporation, engaged in the manufacture of gloves and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "horsehide" either independently or in connection or conjunction with any other word or words, as a brand or label for any of its products sold and distributed in interstate commerce which are not made or fabricated from the hide of a horse; and from the use of the word "horsehide" either independently or in connection or conjunction with any other word or words, in any way which may have the capacity or tendency to confuse or mislead purchasers into the belief that the products so branded, labeled, designated, and represented are made or fabricated from the hide of a horse, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Sept. 11, 1933.)

1096. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, 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 label for their said products, or otherwise to designate or represent such of their products as are not actually throw-outs; and from stating and representing, directly or indirectly, that their said products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar

phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale at that price and/or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; the use of the words, figures or phrases "10¢ and 2 for 25¢ sizes" and/or "off colors and shapes" or either of them, either independently or in connection or conjunction with any other word or words, phrase, or statement, in such a way 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 throw-outs, when such is not the fact, that the price of said products has been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold at 10 cents each or at the rate of 2 for 25 cents, 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. (Sept. 11, 1933.)

1097. False and Misleading Trade Name and Brands or Labels—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 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 brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs; and from stating or representing, directly or indirectly, that his products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any other similar phrase or statement of equivalent meaning to designate or represent products usually and regularly offered for sale and sold at that price; or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, when such is not the fact; the use of the words, figures, or phrases "off sizes", "off shapes", and/or "10¢, 2 for 25¢ sizes" or any of them, either independently or in connection or conjunction with any other word or words, phrase, or statement, in such a way 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 throw-outs, when such is not the fact, that the price of said products has been reduced when such is not the fact, and/or that said products are of a quality usually and regularly sold at 10 cents each, or at the rate of 2 for 25 cents, 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. 11, 1933.)

1098. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution of said products in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations 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.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the words "factory throw-out" and/or "factory throw-outs" either independently or in connection or conjunction with any other word or words, as a trade brand or label for their products, or otherwise to designate or represent such of their products as are not throw-outs; and from stating and representing, directly or indirectly, that their products are throw-outs, when such is not the fact; the use of the words and figures "5¢ straight" to designate or represent products regularly and usually sold and offered for sale at a substantially lower price; and from the use of 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 straight, 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 of the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Sept. 11, 1933.)

1099. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of cigars, and in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution in interstate commerce of similar products, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist 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 brand or label for his said products, or otherwise to represent or designate such of his products which are not throw-outs, and from stating and representing, directly or indirectly, that said products are throw-outs, when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels of the words and figures "5¢ now 2 for 5¢" or "now 2 for 5¢" or either of them either independently or in connection or conjunction with the words "factory throw-outs" 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 throw-outs and/or were manufactured for the purpose and with the intent of being sold and offered for sale at 5 cents each or at a price in excess of what was actually asked for the products, but that the price of said products has been recently reduced, 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. 11, 1933.)

1100. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the 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 their products or on their boxes or labels distributed in interstate commerce, to describe or designate products which are not actually throw-outs; and from stating or representing, directly or indirectly, that any of their products are throw-outs or factory throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price; or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, or that said products are of a quality usually and regularly sold and offered to be sold at a price higher than 2 for 5 cents, 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. (Sept. 11, 1933.)

1101. **False and Misleading Trade Name and Brands or Labels—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 from the use on his labels of the words and figures "guaranteed 10¢ quality" either independently or in connection or conjunction with the words "assorted colors and shapes" or of any similar words, phrases, or statements so as to import or imply that said products were of that quality usually and customarily sold for 10 cents each and/or that said products were manufactured for the purpose and with the intent of being sold for 10 cents each, or at a price in excess of that at which said products were actually sold or offered for sale by the said respondent. The said respondent also agreed to cease and desist from the use on his labels of the statement or phrase "now 2 for 5¢" so as to import or imply that the price of the products referred to has been recently reduced, 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. 11, 1933.)

1102. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist 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 brand or label for his said products, or otherwise to designate or represent such of his products as are not actually throw-outs; and from stating and representing, directly or indirectly, that his said products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or

statement of equivalent meaning to designate or represent products regularly and usually offered for sale at that price and/or which may 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 of the words, figures, or phrases "10¢ and 2 for 25¢ sizes" either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, that the price of said products has been recently reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each or at the rate of 2 for 25 cents, 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. 11, 1933.)

1103. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, 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 brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs; and from stating and representing, directly or indirectly, that his products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been reduced, when such is not the fact; the use of the words, figures, and phrases "10¢ and 2 for 25¢", each (5¢) each", and/or "off colors and shapes" or any of them either independently or in connection or conjunction with any other word or words, phrase, or statement, in such a way 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each, at 5 cents each, or at the rate of 2 for 25 cents, 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. 11, 1933.)

1104. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondents, copartners, engaged in the manufacture of cigars, 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 from the use of the words "throw-outs" or "factory throw-outs" either independently or in connection or conjunction with any other words or words as a trade brand or label for their said products, or otherwise to represent or designate such of their products as are not throw-outs, and from stating and representing, directly or indirectly that their said products are throw-outs, when such is not the fact. The said copartners also agreed to cease and desist from the use on their labels of the words, figures, or phrases "off colors and shapes", "10¢ and 2 for 25¢ sizes" and "each (5¢) each", or either of them, either independently or in connection or conjunction with the words "factory throw-outs", or with any other word or words, phrase or statement, 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 throw-outs, when such is not the fact, or that the price of said products has been reduced, when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 5 cents or 10 cents each, or at 2 for 25 cents, when such is not the fact. The said copartners also agreed to cease and desist from the use on their said labels of the slogan "now 2 for 5¢", or of any similar slogan or statements of equivalent meaning 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 price of the products referred to has been recently reduced, 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. (Sept. 11, 1933.)

1105. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondents, copartners, engaged in the manufacture of cigars, 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 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 brand or label for said products or otherwise to represent or designate such of their products as are not throw-outs, and from stating or representing, directly or indirectly, that said products are throw-outs, when such is not the fact. The said copartners also agree to cease and desist from the use on their labels of the phrase "factory 10¢ and 15¢ throw-outs" either independently or in connection or conjunction with the words and figures "5¢ each" 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 throw-outs or factory throw-outs, when such is not the fact, or that the price of said products has been reduced when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold at 10 cents and 15 cents each, or at a price in excess of that at which said products were actually sold or offered for sale by said copartners, 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. (Sept. 11, 1933.)

1106. **False and Misleading Trade Name, Brands, or Labels, and Advertising—Cigars.**—Respondent, a corporation, engaged in the manufacture of cigars 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 his products in interstate commerce, agreed to cease and desist from the use of the words "factory throw-outs" or "throw-outs" either independently or in connection or conjunction with any other word or words in advertisements or advertising matter or as a trade brand or label for

its products or otherwise to designate or represent such of its products as are not throw-outs; and from stating or representing, directly or indirectly, that its products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may 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, or that said products are of a quality usually and regularly sold at a higher price, 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. (Sept. 14, 1933.)

1107. False and Misleading Advertising—Imitation Pearls.—Respondent, a corporation, engaged in the sale and distribution of jewelry and kindred products, including imitation pearls, 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 or printed matter of the word "pearl" or "pearls" 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 products to which the said word or words refer are made of 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. (Sept. 14, 1933.)

1108. False and Misleading Trade or Corporate Name and Advertising—Nursery Stock.—Respondent, a corporation, engaged in the sale and distribution of nursery stock 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 "nursery" as part of the name under which it trades and from the use of the word "nursery" either independently or in connection

or conjunction with any other word or words in its corporate or trade name, or in 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 the said corporation grows or propagates the product which it sells. The said corporation also agreed to cease and desist from the use in its advertising matter of such statements as "I grow all of my own nursery stock * * *", "direct from grower", or of any other similar statements representing or which may tend to represent that the said corporation grows or propagates the products which it sells or offers for sale, when such is not the fact. The said corporation also agreed to cease and desist from the use of any word or words in connection with its advertising matter or in connection or conjunction with the varietal name or names of nursery stock so as to import or imply, or which may tend to confuse, mislead, or deceive purchasers into the belief that the said corporation has developed, grown, and/or propagated and is offering for sale and selling a new strain of the particular variety of nursery-stock names possessing some characteristic or characteristics which is not or are not found in the ordinary strain of that variety and which differentiates or differentiate it from the stock of that variety offered for sale and sold by its competitors.

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. 14, 1933.)

- 1109. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondents, individuals, 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.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist 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 brand or label for their products, or otherwise to designate or represent such as their products as are not throw-outs; and from stating and representing, directly or indirectly, that their products are throw-outs when such is not the fact; the use of the words and figures "now 2 for 5¢", or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have

the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; the use of the words, figures, and phrases "10¢ and 5¢ cigars" or "off colors and shapes", or either of them, either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, or that the prices of said products have been reduced, when such is not the fact, or that said products are of a quality usually and regularly sold and offered to be sold at 10 cents each or at 5 cents each, when such is not the fact.

Respondents also agreed that if they 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 them in the trial of the complaint which the Commission may issue. (Sept. 18, 1933.)

1110. False and Misleading Trade or Corporate Name and Advertising—Aluminum Ware, Wine Bricks, and Radios and Radio Supplies.—Respondent, a corporation, engaged in the sale and distribution of aluminum ware, and engaged in the sale and distribution of wine bricks, radio and radio 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, 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 trade name, or in its stationery or other printed matter distributed in interstate commerce, 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 corporation owns, operates, and controls the plant or factory in which the said products are made or manufactured, and/or that the said 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. (Sept. 18, 1933.)

1111. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of

cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist 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 brand or label for said products, or otherwise to represent or designate such of said products as are not throw-outs, and from stating and representing, directly or indirectly, that said products are throw-outs when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels of the words, figures, or phrases "10¢ and 2 for 25¢ size", "each 5¢ each" and "off colors and shapes", or any one of them either independently or in connection or conjunction with the words "factory throw-outs", or with any other word or words, phrase or statement 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 throw-outs when such is not the fact, or that the price of said products has been reduced when such is not the fact, or that said products were manufactured for the purpose and with the intent of being sold and offered for sale at 5 cents or 10 cents each or at two for 25 cents when such is not the fact. The said respondent also agreed to cease and desist from the use of his labels of the words "now 2 for 5¢" so as to import or imply that the price of the products referred to has recently been reduced, 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. 18, 1933.)

1112. **False and Misleading Advertising—Umbrellas.**—Respondent, an individual, engaged in the manufacture of umbrellas and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use in his advertising matter of the word "taffeta" either independently or in connection or conjunction with the word "service", or with any other word or words as descriptive of the fabric used in the manufacture of 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 fabric is composed of silk, the product of the cocoon of the silkworm, 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. 20, 1933.)

1113. False and Misleading Advertising—Cotton and Woolen Fabrics.— Respondents, copartners, engaged in the manufacture of cotton and woolen fabrics and in the sale and distribution thereof in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in their advertising matter of the word "taffeta" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of their 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 of silk, the product of the cocoon of the silkworm, 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. (Sept. 20, 1933.)

1114. False and Misleading Trade Name and Brands or Labels—Candles.— Respondent, a corporation, engaged in the manufacture of candles 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 therefrom forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use on brands, labels, or otherwise of the words and figures "51% beeswax", "65%" and/or "100% beeswax", when in truth and in fact the beeswax content of such products is less than the percentages stated; and from the use on brands, labels, or otherwise of any words or figures which may confuse, mislead, or deceive purchasers in reference to the actual beeswax content of its products; the use of the word "beeswax" either independently or in connection or conjunction with any other word or words on its brands or

labels circulated 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 composed in whole or in substantial part of beeswax; unless, when said products are composed in substantial part of beeswax and the word "beeswax" is used as a trade brand or designation for said products, in which case the said word "beeswax" shall be accompanied by some other word or words which shall be displayed in type equally as conspicuous as that in which the word "beeswax" is printed, so as to indicate clearly that said products are not made wholly or in substantial part of beeswax, or that will otherwise properly represent and describe said products.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Sept. 20, 1933.)

1115. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the use of and selling his products in interstate commerce, agreed to cease and desist 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 brand or label for his products, or otherwise to designate or represent such of his products as are not throw-outs, and from stating or representing, directly or indirectly, that his products are throw-outs, when such is not the fact; the use of the words and figures "now 2 for 5¢", or of any other similar statement or phrase of equivalent meaning, to designate or represent products usually and regularly offered for sale and sold at that price; or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, when such is not the fact; the use of the words, figures, or phrases "10¢ and 2 for 25¢ sizes" and/or off colors and shapes" or either of them either independently or in connection or conjunction with any other word or words, phrase, or statement in such a way 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 throw-outs, when such is not the fact, that the price of said products has been reduced when such is not the fact and/or that said products are of a quality usually and regularly sold at

10 cents each, or at the rate of 2 for 25 cents, 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. 20, 1933.)

1116. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, a corporation, engaged in the manufacture of cigars 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 "throw-outs" or "factory throw-outs" either independently or in connection or conjunction with any other word or words as a trade brand or label for its said products, or otherwise so to represent or designate such of its products as are not throw-outs, and from stating and representing, directly or indirectly that said products are throw-outs, when such is not the fact; the use of the words "factory close-outs" either independently or in connection or conjunction with any other word or words as a trade brand or label for its said products, or otherwise so to designate or represent such of its products as are not being closed out, and from stating and representing, directly or indirectly, that said products are close-outs, when such is not the fact; the use of the words "factory throw-outs" and/or "factory close-outs" either independently or in connection or conjunction with any other words, figures, or phrases which may import or imply that the price of said products has been reduced, 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. (Sept. 22, 1933.)

1117. False and Misleading Advertising—Toiletries, Cosmetics, Flavoring Extracts, Spices, and Medicines.—Respondent, a corporation, engaged in the manufacture of toiletries, cosmetics, and other toilet preparations, flavoring extracts, spices, and medicines, 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 in its advertisements and advertising matter circulated in interstate commerce from the use of the words and phrases "Mai", "Floral de Pomade", "Narcisee" and/or "Fleur de Mae" or any of them either independently or in connection or conjunction with each other, or with any other words or phrases from the French language 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 are applied are imported, or were made in France, when such is not the fact; the use of the word "importer" either independently or in connection or conjunction with words or phrases from the French language in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said respondent is an importer, or that the products which it sells and offers for sale are imported from a foreign country, when such is not the fact; advertising, representing, or describing its products with any false, fictitious, or misleading representations respecting the value thereof; the use of any statement or representations or of words implying that the prices, terms, and conditions set out in its advertisements and advertising matter are special, or for a limited time only, or at a reduced price, 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, or in any way as descriptive of merchandise accompanying its products which may import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such merchandise is given as a gratuity in consideration of the purchase of other products, and when the price of said article alleged to be given free is included in the price paid for some other product or products; the use of the word "pearl" or "pearls" to describe imitation pearls, 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 described are 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. (Sept. 29, 1933.)

1118. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement

to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "throw outs" either independently or in connection or conjunction with any other word or words as a trade brand or designation for said products, or otherwise to represent or designate such of his products as are not actual throw-outs, and from stating or representing, directly or indirectly, that said products are throw-outs, when such is not the fact. The said respondent also agreed to cease and desist from the use of the words "throw-outs" as descriptive of cigars sold by him in interstate commerce which may have the capacity or tendency to mislead or deceive purchasers into the belief that the cigars so represented are cigars which because of some imperfection did not pass inspection and therefore were not being sold or offered for sale as the regular brand for which said cigars were manufactured, or for the price that would be asked for the same quality of cigars had they passed such inspection.

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. 29, 1933.)

1119. False and Misleading Advertising—Gallstone and Stomach Trouble Treatment.—Respondents, copartners, engaged in the manufacture of a product for the treatment of gallstones and stomach trouble and in the sale and distribution thereof in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist from the use in their advertising matter of statements and representations to the effect that gallstone pain yields to its product, or that the said product can be relied upon to bring quick relief from gallstone pain, and from the use of any similar statements and representations of equivalent meaning, when such are not the facts. The said respondents also agreed to cease and desist from the use in said advertising matter of statements and representations so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that said product possesses therapeutic value so that it will soften or dissolve, remove or cause the removal of gallstones, or will relieve or lessen gallstone colic or pain, 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. (Sept. 29, 1933.)

1120. **False and Misleading Brands or Labels and Advertising—Malt Products, Cordials, Etc.**—Respondent, an individual, engaged in the sale and distribution of malt products, cordials, etc., 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 malt 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 word "malt" or with any other word or words, or in any other way on the labels affixed to said products, or otherwise to represent or designate such of his products as are not malt extracts, and from stating and representing, directly or indirectly, that said products are malt extracts when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Oct. 13, 1933.)

1121. **False and Misleading Advertising—Facial Cream.**—Respondent, a corporation engaged in the manufacture of a facial cream and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of 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 its said product, when applied to the face or skin, would be absorbed more deeply than other cosmetics, or would invigorate or nourish the skin, or make the skin young, or will heal skin eruptions, when such are not the facts. The said corporation also agrees to cease and desist from stating or representing that its product keeps the skin supple, young, active, due to its alleged duplication of the effects of a suppositious "facial gland-hormone fluid", when such is not the fact. The said corporation also agrees to cease and desist from stating or representing in its said advertising matter that its so-called "biochemical laboratory" was founded by a doctor, alleged

to be either "an eminent skin specialist" or a "dermatologist to royalty" or to have been "honored by royalty" 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, 1933.)

1122. False and Misleading Advertising—Metallic Grave Vaults.—Respondent, a corporation, engaged in the manufacture of a metallic grave vault and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from making exaggerated statements and representations not warranted by the facts, respecting the durability underground of its products; and from the use of statements and representations which have the capacity or effect to mislead and deceive purchasers into the belief that said products will last 100 years or more, or 50 years or more underground, when such is not the fact; the use in advertisements and advertising matter of statements and representations that its products are guaranteed for 100 years, or 50 years, against the admission of water and/or the effect of corrosion, when such statements and representations are not warranted by the facts.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Oct. 23, 1933.)

1123. False and Misleading Prices and Advertising—Food Flavors, Toilet Preparations, Etc.—Respondent, a corporation, engaged in the manufacture of food flavors, toilet preparations, and like products and in the sale and distribution of the same in interstate commerce, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from advertising or in any way marking its products with fictitious or exaggerated prices and from making any false, fictitious, or misleading statements or representations concerning the valuation or prices at which said products, or any of them, are sold or contemplated to be sold in the ordinary course of business. The said corporation also agreed to cease and desist from the use of the word "extract" either independently or in connection or conjunction with any other word or

words, or in any other way 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 extracts, 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, 1933.)

1124. False and Misleading Brands or Labels and Advertising—Face Cream and Other Cosmetics.—Respondent, a corporation, engaged in the manufacture of cosmetics, including a face cream designated "turtle oil cream", 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 on stickers affixed to its product or in its advertising matter distributed in interstate commerce of 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 its product possesses properties and values which when it is applied externally will rejuvenate or nourish the skin, or will banish or eradicate wrinkles and keep the skin young, or permit or cause the skin to revitalize itself by overcoming "a functional glandular deficiency" or materially aid glandular secretion and assist in renewing the skin, 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. (Oct. 30, 1933.)

1125. False and Misleading Trade Name and Brands or Labels—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 from the use of the word "throw-outs", either independently or in connection or conjunction with the word "factory" and/or "original", or with any other word or words as a trade brand, or on his labels for said products, or otherwise to represent or designate such of his products

as are not actually throw-outs, and from stating and representing, directly or indirectly, that his products are throw-outs, when such is not the fact. The said respondent also agreed to cease and desist from the use on his labels of the words and phrases "10¢ and 2 for 25¢ sizes" and "off colors and shapes" or of any similar word or words or equivalent meaning to designate or represent products regularly and usually sold and offered for sale at a lower price and/or which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the products referred to are 10 cents or two for 25 cents value, but which price has been reduced, when such is not the fact. The said respondent also agreed to cease and desist from the use on his said labels of the statement "now 2 for 5¢", so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the price of the products referred to has been recently reduced, 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. 30, 1933.)

1126. **False and Misleading Brands or Labels and Advertising—Neckwear.**—Respondent, an individual, engaged in the manufacture of neckwear and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein:

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "silk" or of the word "satin" as descriptive of products sold and distributed by him in interstate commerce, when said products so represented are not composed of silk, the product of the cocoon of the silkworm. The said respondent also agreed to cease and desist from the use on labels affixed to said products or in his advertising and printed matter distributed in interstate commerce, of the word "silk" or of the word "satin" 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 said products are composed of silk, when such is not the fact. The said respondent also agreed to cease and desist from the use on labels affixed to products sold by him in interstate commerce of any foreign words or phrases, and of the pictorial representation of an edifice simulating in appearance the Eiffel Tower at Paris, France, or of any other words, statement, or representation of sim-

ilar import which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products were made or manufactured in Paris, France, or abroad and/or imported into the United States, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Oct. 30, 1933.)

1127. **Simulation of Trade Name and False and Misleading Advertising—Shrimp and Oysters.**—Respondent, a corporation, engaged in the canning of shrimp and oysters and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein:

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of its corporate name in its advertisements or advertising matter or otherwise, and also agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the word "star" either independently or in connection or conjunction with any other word or words, or as used in its slogan so as to mislead or deceive purchasers into the belief that the said respondent and the Star Fish & Oyster Co., Inc., the Alabama corporation, are one and 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, the 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. 10, 1933.)

1128. **False and Misleading Prices and Advertising—Food Flavors, Toilet Preparations, etc.**—Respondent, a corporation, engaged in the sale and distribution of specialty merchandise including food flavors, toilet preparations, and necklaces 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 advertising, or in any way marking its products with fictitious or exaggerated prices, and from making any false, fictitious, or misleading statements or representations concerning the valuation or prices at which said products, or any of them, are sold or contemplated to be sold in the ordinary course of business. The said corporation also agreed to cease and desist from the use in its advertising matter of whatso-

ever character distributed in interstate commerce of the word "pearl" either independently or in connection or conjunction with any other word or words as descriptive of products which are not composed of pearls, the product of certain mollusks and/or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said products so represented are composed of pearls, when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "extract" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of 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 extracts, 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. 13, 1933.)

1129. False and Misleading Advertising and Disparagement of Competitor's Product—Wire Rope and Cable.—Respondent, a corporation, engaged in the manufacture of wire rope and cable and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from circulating in interstate commerce among customers or prospective customers of its competitor or competitors, written or printed matter containing statements or representations such as that said competitor proposed to furnish rope of foreign manufacture though it had contracted and was expected to furnish rope of domestic manufacture, or that said competitor was not in a position to make rope or anything complete in this country, or that said competitor does not have the equipment or materials to make rope, or that the materials used by said competitor in the fabrication of ropes offered for sale and sold by it in interstate commerce would be purchased by said competitor in their entirety from abroad, when such are not the facts. The said respondent also agreed to cease and desist from the use in its written or printed matter distributed in interstate commerce of any and all statements or representations which may have the capacity or tendency to mislead or deceive purchasers into an erroneous belief that its competitor or competitors do not deal fairly and honestly with its or their customers.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the Commission may issue. (Nov. 15, 1933.)

1130. **False and Misleading Prices and Advertising—Flavoring Products and Toilet Preparations.**—Respondent, a corporation, engaged in the sale and distribution of flavoring and other food products and cosmetics and other toilet preparations in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from advertising or in any way marking its products with fictitious or exaggerated prices and from making any false, fictitious, or misleading statements or representations concerning the values or prices at which said products, or any of them, are sold or are contemplated to be sold in the ordinary course of 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. (Nov. 15, 1933.)

1131. **False and Misleading Trade or Corporate Name and Advertising—Epilepsy Remedy.**—Respondent, a corporation, engaged in the sale and distribution of an alleged remedy for epilepsy 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 advertisements and advertising matter distributed in interstate commerce of any and all of the aforesaid statements and representations, or of any other similar statements and representations of equivalent meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product advertised, sold, and distributed in interstate commerce by the said corporation is a cure for epilepsy and/or has or possesses therapeutic value for the treatment of epilepsy in excess of what is actually the fact. The said corporation also agrees to cease and desist from the use of statements in its advertising matter to the effect that the product of respondent is the "first treatment" which stops and relieves epileptic attacks, or that said product is a "new remedy" for the treatment of epilepsy, or that it contains a "new ingredient" which gives the treatment greater therapeutic value or that the product of respondent has been prescribed by great specialists throughout the

world and/or that it has been used exclusively with outstanding success by epilepsy colonies, when such are not the facts. The said corporation also agreed to cease and desist from the use of the word "laboratories" as part of, or in connection or conjunction with its corporate name or trade name in soliciting the sale of and selling products in interstate commerce so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that said products are actually compounded or manufactured by said corporation in a laboratory owned, operated, and controlled 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. (Apr. 13, 1934.)

1132. False and Misleading Advertising—Hardware and Tools.—Respondent, an individual, engaged in the business of selling by mail order and otherwise hardware and tools 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 galvanized cloth in interstate commerce, agreed to cease and desist from the use in his catalogs or other printed matter distributed in interstate commerce of statements or representations that his said product is 100 percent better than any other galvanized cloth made and/or that it will outwear the bright galvanized cloth at least four times, when such are not the facts.

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. 22, 1933.)

1133. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, a corporation, engaged in the manufacture of cigars 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 his products in interstate commerce, agreed to cease and desist from the use of the words "throw-outs" either independently or in connection or conjunction with the word "factory", or with any other word or words as a trade brand or label for said products, or otherwise to represent

or designate such of its products as are not throw-outs, and from stating and representing, directly or indirectly, that said products are throw-outs, when such is not the fact. The said corporation also agreed to cease and desist from the use of the price representation "5¢" either independently or in connection or conjunction with the words "factory throw-outs" or with any other word or words on its labels 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 were manufactured for the purpose and with the intent of being sold at 5 cents each, when such is not the fact. The said corporation also agreed to cease and desist from the use on its labels of the phrase or statement "Now 2 for 5 cents" or of any similar phrase or statement of equivalent meaning 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 price of the products referred to has been recently reduced, 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. 1, 1933.)

1134. **False and Misleading Advertising—Shoes.**—Respondent, an individual, engaged in the sale of shoes at retail and in the sale and distribution through agents of shoes in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising matter of whatever character of the statements "made in our dress shoe factory" and "direct from factory" or either of them either independently or in connection or conjunction with any other word or words, statements, or representations so as to impart or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said respondent makes or manufactures the product which he sells, or that he owns, operates, and controls the plant or factory in which said products are made or manufactured.

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. (Dec. 1, 1933.)

1135. **False and Misleading Brands or Labels and Advertising—Shirts.**—Respondent, a corporation, engaged in the manufacture of shirts and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words “fast color” on labels affixed to said products or otherwise to advertise the same, which products are not made of cloth dyed with “fast” dyes as that term is understood by the purchasing public and/or which will not fade when laundered or washed; and from the use of the word “fast” either independently or in connection or conjunction with any other word or words as descriptive of the color of said products, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the color of said products will not fade when laundered or washed if and 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. 8, 1933.)

1136. **False and Misleading Brands or Labels, Prices, Trade Names, and Advertising—Food Flavors, Spices, etc.**—Respondent, an individual, engaged in the manufacture of food flavors, spices, and the like 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 advertising or in any way marking his products with fictitious or exaggerated prices, and from making any false, fictitious, or misleading statements or representations concerning the valuation or prices at which said products or any of them are sold or contemplated to be sold in the ordinary course of business. The said respondent also agreed to cease and desist from the use of the word “extracts” either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of products so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that said products are extracts, when such is not the fact. The said respondent also agreed to cease and desist from the use of the word “vanilla” as descrip-

tive of products which are not made from the capsule or bean of the vanilla plant; unless when said products have flavor simulating vanilla flavor and the word "vanilla" is used as descriptive thereof, the said word "vanilla" shall be immediately accompanied by the word "imitation" or some other word or words of similar import printed in type equally as conspicuous as that in which the word "vanilla" is printed so as to indicate clearly that said products are made of an ingredient or ingredients other than the vanilla capsule or bean. The said respondent further agreed to cease and desist from the use in his advertisements or advertising matter distributed in interstate commerce of the word "president" in connection or conjunction with his name and the trade name "Crema folks", 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 they are dealing with a corporation or that the said concern is incorporated, 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. (Dec. 8, 1933.)

1137. **False and Misleading Brands, Prices, Trade Name, and Advertising—Flavoring Products, Toilet Preparations, etc.**—Respondent, an individual, engaged in the manufacture of flavoring and other food products and cosmetics and other toilet preparations, and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from advertising, or in any way marking his products with fictitious or exaggerated prices, and from making any false, fictitious, or misleading statements or representations concerning the valuation or prices at which said products or any of them are sold or contemplated to be sold in the ordinary course of business. The said respondent also agreed to cease and desist from the use of the word "extract" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of 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 extracts, when such is not the fact. The said respondent further agreed to cease and desist from the use in his advertisements of the word "president" in connection or conjunction with his name and

trade name, or with any other word or words, or in any other way as descriptive of 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 extracts, when such is not the fact. The said respondent further agreed to cease and desist from the use in his advertisements of the word "president" in connection or conjunction with his name and trade name, or with any other word or words or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that they are dealing with a corporation, or that his company is incorporated, 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. (Dec. 13, 1933.)

1138. False and Misleading Advertising—Insecticides, Pest Exterminators, etc.—Respondent, a corporation, engaged in the manufacture of insecticides and pest exterminators, including a raticide, 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 statement "endorsed and recommended by the Department of Agriculture" or of any other similar statement or combination of words of equivalent meaning 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 has been endorsed or recommended by the Department of Agriculture.

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. 13, 1933.)

1139. False and Misleading Trade Name and Brands or Labels—Cigars.—Respondent, a corporation, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "throw-outs" either independently or in connection or con-

junction with any other word or words as a trade brand or label for said product, or otherwise to represent or designate such of its products as are not throw-outs, and from stating or representing directly or indirectly that such products are throw-outs, when such is not the fact. The said corporation also agreed to cease and desist from the use on its labels of the phrase "factory 10¢ straight throw-outs" so as to import or imply that the said products were of that quality usually and customarily sold for 10 cents each and/or that said products were manufactured for the purpose and with the expectation of being sold for 10 cents each or at a price in excess of that at which said products were actually sold or offered for sale. The said corporation also agreed to cease and desist from the use on its labels of the statement or phrase "special now 2 for 5¢" so as to mislead or deceive purchasers into the belief that the price of the products referred to has been recently reduced or that the said price is a special price or a price other than that at which said products are sold in the ordinary course of trade.

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. 13, 1933.)

1140. **False and Misleading Advertising—Caskets.**—Respondent, a corporation, engaged in the manufacture of caskets, both of the metal and hardwood types, and in the sale and distribution thereof in commerce between and among various States of the United States, 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 or advertising matter of the word "walnut" either independently or in connection or conjunction with any word or words as descriptive of its products so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or fabricated from walnut. The said corporation also agreed to cease and desist from the use of the word "mahogany" either alone or in combination with any other word or words as descriptive of 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 made or fabricated from mahogany; unless, when said products, respectively, are made or fabricated in substantial part from walnut or mahogany and the word "walnut" or the word "mahogany" is used as descriptive thereof, then in that case the word

"walnut" or the word "mahogany" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "walnut" or the word "mahogany" is printed so as to clearly indicate that such products are made or fabricated in part from a wood or woods other than walnut or mahogany.

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. 20, 1933.)

1141. False and Misleading Trade Name and Advertising—Moldings.—Respondent, a corporation, engaged in the manufacture of wooden moldings which are covered with various types of veneer and which were sold in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "walnut" either independently or in connection or conjunction with other word or words in its advertising matter or as a trade designation for its products so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are those products which are derived from the walnut or "juglandaceae" family, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Dec. 20, 1933.)

1142. False and Misleading Brands or Labels—School Supplies.—Respondent, an individual, engaged in the sale and distribution of school supplies, including crayons, in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "manufactured" or the abbreviation "m'f'd." therefor either alone or in connection or conjunction with the word "by" or with any other word or words, or in any way on his labels or containers for said products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said respondent makes or manufactures the products sold by him in

interstate commerce and/or that he owns, operates, and controls the plant or factory in which said products are made or manufactured.

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. (Dec. 29, 1933.)

1143. **False and Misleading Advertising—Cosmetic Preparation.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of a certain cosmetic preparation and in competition with other corporations, firms, partnerships, and individuals 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 products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the word "French" either independently or in connection or conjunction with any other word or words, statement or representations as descriptive of its products so as to import or imply that said products, or any of them, are made or manufactured in France and imported into the United States, when such is not the fact; and from the use of the word "French" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers with reference to the country or place of origin of its products. The said corporation also agreed to cease and desist from the use of the words "These beauty preparations were created by one of Europe's most successful scientists" or of any other similar combination of words, statement, or representation which may tend to mislead or deceive purchasers into the belief that said products were made or manufactured in accordance with formulas created by a European scientist, beauty or skin specialist, 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. 29, 1933.)

1144. **False and Misleading Brands or Labels—Corrugated Boxes and Paper.**—Respondent, a corporation, engaged in the manufacture of corrugated boxes and corrugated paper and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use as a mark, stamp, or brand on its products of the word "maker" in connection

or conjunction with any other word of equivalent meaning so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products sold by respondent are manufactured by the concern whose name is stamped or branded on its products, when such is not the fact.

Respondent also agreed that, should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Jan. 8, 1934.)

1145. False and Misleading Trade Name and Brands or Labels—Macaroni Products.—Respondent, a corporation, engaged in the manufacture of macaroni products, known to the trade as alimentary pastes, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Italian" as part of its trade brand or label so as to confuse, mislead, or deceive purchasers into the belief that its products are manufactured in or imported from Italy, 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. 8, 1934.)

1146. False and Misleading Prices and Advertising—Food Flavors.—Respondent, an individual, engaged in the sale and distribution of alleged food flavors 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 or combinations of products in interstate commerce, agreed to cease and desist from advertising, or in any way marking his products with fictitious or exaggerated prices, and from making any false, fictitious, or misleading statements or representations concerning the valuation or prices at which said products, or any of them, are sold or contemplated to be sold in the ordinary course of business.

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. 12, 1934.)

1147. **False and Misleading Advertising—Sanitary Napkins.**—Respondent, a corporation, engaged in the manufacture from wood cellulose of a sanitary napkin, 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 napkins in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter having interstate circulation and distribution, of the word "rayon" either independently or in connection or conjunction with the word "cellulose" or with any other word or words, or in any way as descriptive of 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 made or fabricated from rayon, 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. 17, 1934.)

1148. **False and Misleading Advertising—Furniture.**—Respondent, a corporation, engaged in the manufacture of furniture 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, hereby agreed to cease and desist from the use of the word "walnut", either independently or in connection or conjunction with the word "oriental", or with any other word or words in its advertising matter of whatever character, 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 those products which are derived from trees of the walnut or juglandaceae family, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Jan. 19, 1934.)

1149. **False and Misleading Trade or Corporate Name and Advertising—Magazine.**—Ira W. Wolfe and Alexander B. LaZoris are individuals trading as National Industrial Recovery Association and National Recovery Association, with their principal place of business in the city of Chicago, Ill. They have been engaged for some

time past in the publication of a magazine styled "Business and Industrial Recovery News", and in soliciting the sale of and distributing said magazine in interstate commerce, causing the same to be sent or shipped from their place of business in the State of Illinois to individuals and concerns located in a State or States other than the State of Illinois. In the course and conduct of their business Ira W. Wolfe and Alexander B. LaZoris were at all times herein referred to in competition with other individuals, firms, partnerships, and corporations likewise engaged in similar businesses.

In the course and conduct of their business Ira W. Wolfe and Alexander B. LaZoris adopted as and for their trade names the words "National Industrial Recovery Association" and "National Recovery Association", and which trade names the said individuals used in soliciting the sale of and distributing a magazine edited by them and which they distributed in interstate commerce. The said Ira W. Wolfe and Alexander B. LaZoris, in soliciting the sale of their magazine in interstate commerce, caused post cards to be distributed among prospective purchasers located in various States of the United States. They also caused issues of their said publication to be sent from their place of business in the State of Illinois to persons and concerns located in a State or States other than the State of Illinois. On said post cards appeared statements such as "Business and Industrial Recovery News . . . a publication issued by the National Industrial Recovery Association", and under the official emblem known as the "Blue Eagle" of the National Recovery Administration appeared "A N.I.R.A. Publication." The letters "N.R.A." appeared over the said emblem. Issues of the publication distributed by the said Ira W. Wolfe and Alexander B. LaZoris in interstate commerce contained language such as "If you like this publication pin a \$1 bill to this and mail it to the National Recovery Association, Suite 702-3 Garrick Theater Building, Chicago, Ill." Items appeared in said publications such as "Report N.R.A. cheaters immediately. Mail all complaints regarding any firm, business, or individual cheating under the N.R.A. or Blue Eagle emblem. Be sure to give full details and information. Sign your name and address. All reports will be treated confidential and your name will not be disclosed. Address to N.I.R.A. Investigator, 703 Garrick Theater Building, Chicago, Ill." Under the heading "Contributions" appeared "Just address your letter to N.I.R.A. Editor, care of Business and Industrial Recovery News, 702 Garrick Theater Building, Chicago, Ill."—when in truth and in fact the said magazine or publication distributed by the said Ira W. Wolfe and Alexander B. LaZoris in interstate commerce was not an official publication of the United States Government, or sponsored by, or in any way connected or affiliated with, the National Recovery Administration

charged with the enforcement of the National Industrial Act, or the United States Government, or any department, bureau, or branch thereof. The aforesaid magazines also displayed the following language or statements: "N.I.R.A. is a trademark and copyright for the National Industrial Recovery Association as a division for Industrial Enterprises, Manufacturers, and Jobbers of the Time and Profit Club" and "N.R.A. is National Recovery Association for retail stores, department stores, and wholesalers division of the Time and Profit Club"—when in truth and in fact the said Ira W. Wolfe and Alexander B. LaZoris have no copyright or exclusive right to the use of the letters arranged in the following order "N.I.R.A." or "N.R.A."

It is further stipulated and agreed by and between the said Garland S. Ferguson, Jr., Chairman of the Federal Trade Commission, and Ira W. Wolfe and Alexander B. LaZoris, in soliciting the sale of and distributing their publication or magazine in interstate commerce, hereby jointly and severally agree to cease and desist from the use in their said publication or magazine or otherwise in advertising the same in interstate commerce of the words "National Recovery Association" or "National Industrial Recovery Association" and of the letters "N.I.R.A." or "N.R.A." arranged in the order given, either independently or in connection or conjunction with the official emblem known as the "Blue Eagle" of the National Recovery Administration, or of any other word or words, or in any way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers or prospective purchasers into the belief that the said magazine or publication is an official publication of the United States Government or is sponsored by or in any way connected or affiliated with the National Recovery Administration or the United States Government, or any department, bureau, or branch thereof, when such is not the fact. The said Ira W. Wolfe and Alexander B. LaZoris also agree to cease and desist from the use in their said magazine or publication or advertising matter of any and all statements or representations which may have the capacity or tendency to mislead or deceive purchasers or prospective purchasers into the belief that the said individuals have a copyright or exclusive right to the use of the letters "N.I.R.A." or "N.R.A." arranged in the order given, when such is not the fact.

It is also stipulated and agreed that if Ira W. Wolfe and Alexander B. LaZoris should ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against them in the trial of the complaint which the Commission may issue.

It is further stipulated and agreed by and on behalf of the Commission that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the names of the respondents, shall be released for publication and become a part of the public record. (Jan. 24, 1934.)

1150. False and Misleading Advertising—Toilet Seats.—Respondent, a corporation, engaged in the manufacture of toilet seats 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, hereby agreed to cease and desist from the use of the words "sheet covered" either independently or in connection or conjunction with any other word or words in its advertising matter of whatever character 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 toilet seat frame of said products is covered with a separate sheet of celluloid or other material and/or that the said toilet seat frame is "sheet covered" as such designation is generally understood by the trade and/or understood by the purchasing public to mean with reference to toilet seats.

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. 24, 1934.)

1151. False and Misleading Brands or Labels—Table Delicacies.—Respondent, a corporation, engaged in the manufacture and importation of wines, glace fruits, and table delicacies, 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 said products in interstate commerce agreed to cease and desist from the use on its labels affixed to said products of the words "sauterne" or "chateau", or of the words "bourgogne" or "medoc" either independently or in connection or conjunction with the words "vin de" or the word "bordeaux", or with any other word or words, pictorial representation or insignia, or in any way so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said products are French products

or are made or manufactured in France and/or are imported into the United States from such 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 of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 9, 1934.)

1152. False and Misleading Trade Name, Brands or Labels, and Advertising—Canned Shrimp and Oysters.—Respondent, an individual, engaged in the sale and distribution of canned shrimp and oysters 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 said products in interstate commerce, agreed to cease and desist from the use of the word "packing" as part of or in connection or conjunction with his trade name so as to import or imply that the said respondent packs the products which he sells in interstate commerce. The said respondent also agreed to cease and desist from the use of the word "packing" and/or of the word "packers" on his letterheads, envelopes, invoices, or in his correspondence, or on his labels affixed to the containers of products, or in any other way 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 plant or plants in which said products are canned or packed.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 19, 1934.)

1153. False and Misleading Trade or Corporate Name and Advertising—School Courses.—Respondent, a corporation, engaged in selling and distributing home-study or correspondence-school courses in interstate commerce and in competition with other corporations, individuals, firms, and partnerships similarly 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 courses of instruction in interstate commerce, agreed to cease and desist from the use of the word "university" as part of, or in connection or conjunction with its corporate or trade name, or in its literature, or in any other way when such use by the said corporation of the word "university" tends to import or imply or has or may have the capacity or tendency to confuse, mislead, or deceive purchasers of said courses of instruction into the belief that the said corporation is a university or institution organized for study and teaching in

the higher branches of learning, and that it is empowered to confer degrees in special departments such as theology, law, medicine, and the arts, when such is not the fact. The said corporation also agrees to cease and desist from the use in its printed or advertising matter distributed in interstate commerce of the statement or representation that "The univeristy guarantees that, if upon completion of this course the student is dissatisfied, it will refund all money paid", or of any other similar statement or representation of equivalent meaning so as to import or imply or which may have the capacity or tendency to mislead or deceive the student purchaser into the belief that the cost of the course of instruction will be refunded to the student upon completion of the same if said student represents to said school that he or she is dissatisfied; unless, when said statement or representation guaranteeing refund is used by said corporation and there be terms or conditions other than the mere representation of the student purchaser upon completion of the course of instruction that he or she is dissatisfied therewith, and which terms and conditions are to be fulfilled by the student before a refund will be made by said corporation to the student, then in such event each and all of said terms and conditions shall be clearly and accurately set forth in connection or conjunction with said statement or representation.

Respondent also agreed that should it ever resume or indulge in any of the practices in question this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 19, 1934.)

1154. **False and Misleading Advertising—Sea Foods.**—Respondent, an individual, engaged in the sale and distribution as a broker of canned shrimp and oysters and other sea foods 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, agreed to cease and desist from the use of the words "packer" and "producer", or of any other words of equivalent meaning, either independently or in connection or conjunction each with the other, or with any other word or words, or in any way on his printed or advertising matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said respondent owns, operates, and controls the plant in which are canned the products sold by him in interstate commerce, when such is not the fact. The said respondent also agrees to cease and desist from the use of the statement "Having increased our fishing fleet, we are in much better position now to pack shrimp", or of any other

statements of equivalent meaning which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said respondent owns, operates, and controls the fishing fleet used in catching shrimp, oysters, or other sea food sold by him, 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 of the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 19, 1934.)

1155. Disparaging Competitors' Products and False and Misleading Advertising—Cooking Ware.—Respondent, an individual, engaged in the sale and distribution of cooking ware in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertisements or otherwise in soliciting the sale of and selling his products in interstate commerce, of statements or representations to the effect that the use of aluminum cooking utensils is the cause of cancer or other grave maladies or of the increase of such disorders among the users of such utensils; or that the use of aluminum cooking utensils forms poisons which result or may result in the illness of persons who have eaten food prepared or stored in such utensils; or that there is danger in the use of aluminum cooking utensils; or that many hospitals have dispensed or are dispensing with their aluminum cooking equipment because it has been proven that the use of such equipment for the preparation of food was or is responsible for the increase of cancer; or that thousands of people are dying every day from cancer due to their use of aluminum cooking utensils; or that the use of aluminum ware would produce sores and later cancers; or that doctors and hospitals are now advising people against the use of aluminum cooking utensils because of the poisonous effect thereof; and the said respondent agreed to cease and desist from the use of any other similar statements and representations which convey or may tend to convey the belief that the use of aluminum cooking utensils causes cancer or sores or produces poison and/or that danger attends the use of such utensils. The said respondent also agreed to cease and desist from stating or representing in his printed matter or otherwise that his is "the only double boiler in which it is safe to leave food standing", so as to import or imply, or which may tend to mislead or deceive purchasers into the belief that it is unsafe to leave food standing in metal cooking utensils of his competitors, when such is not the fact. Said respondent further

agreed to cease and desist from the use of the statement "There is absolutely no chance of mineral poisoning with the Waterless Cooker, as there is no metal to touch the food or to pass into the food", so as to import or imply, or which may tend to mislead purchasers into the belief that the aluminum products of competitors pass metal into food placed therein or cause mineral poisoning of food placed or cooked therein, when such is not the fact. The said respondent also agreed to cease and desist from circulating, representing, or publishing or causing to be circulated, represented, or published among purchasers or prospective purchasers any similar false, deceptive, or misleading statements of or concerning the products of competitors. The said respondent also agreed to cease and desist from the use of the words "Manufacturers of" on his letterheads, stationery, or other printed or advertising matter, distributed in interstate commerce, so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said respondent manufactured the products which he sells and/or that he owns, operates, and controls the plant or factory wherein said products are made or manufactured, when such is not the fact. The said respondent further agreed to cease and desist from stating or representing, directly or indirectly to purchasers or prospective purchasers, that his said products are proof against chipping or crazing, 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 of the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 21, 1934.)

1156. False and Misleading Brands or Labels, Prices, and Advertising—Mattresses.—Respondents, individuals engaged in the business of manufacturing mattresses 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.

Respondents, in soliciting the sale of and selling their said products in interstate commerce, hereby agreed to cease and desist forever from the use of labels or advertisements or advertising matter on which, or in which their said mattresses are represented, designated, or referred to by means of a misleading or fictitious price known to be in excess of the price at which said mattress is normally sold or contemplated to be sold in the usual course of trade.

Respondents also agreed that should they ever resume or indulge in any of the practices in question this said stipulation of the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Feb. 26, 1934.)

1157. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist forever from: (a) 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 his products, or on his boxes or labels distributed in interstate commerce, to describe or designate products which are not actually throw-outs; and from stating or representing, directly or indirectly, that his said products are throw-outs, or factory throw-outs, when such is not the fact; (b) the use of the words and figures "Now 2 for 5 cents" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, or which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the prices of the products referred to have been recently reduced, when such is not the fact; and (c) the use of the words, figures, or phrases "off colors and shapes" and/or "10¢ and 2 for 25¢ sizes", or any of them, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of said products has been reduced or that said products are of a quality usually and regularly sold at 10 cents each, or at the rate of 2 for 25 cents, 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 of the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 26, 1934.)

1158. **False and Misleading Prices and Advertising—Foods, Drugs, and Household Necessaries.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of a variety of merchandise, including foods, drugs, and household necessities, 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 set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist forever from: The use in advertisements and advertising matter of statements and

representations that it is a manufacturer, or that it manufactures, fabricates, or compounds the products which it sells and distributes, or any of them, and from the use of any words, language, statements, or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it owns, controls, or operates any laboratory or factory wherein such products are manufactured or compounded, when such is not the fact; and the use in advertisements or advertising matter of any fictitious or exaggerated prices, and from making any false, fictitious, or misleading statements or representations concerning the value of, or the price at which said products, or any of them, are sold or intended to be sold in the usual course of trade.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 26, 1934.)

1159. **False and Misleading Brands or Labels and Advertising—Sponges and Chamois Skins.**—Respondent, a corporation, engaged in the sale and distribution of sponges and of chamois skins 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 set forth therein.

Respondent, in soliciting the sale of and selling its chamois products in interstate commerce, hereby agreed to cease and desist from the use of the word "Frenchy" either independently or in connection or conjunction with the word "brand" or with any other word or words on its brands or labels affixed to said products, or in its printed matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are of French manufacture or origin and/or imported into the United States from said country, when such is not the fact. The said corporation also agrees to cease and desist from the use on its letterheads or printed matter distributed in interstate commerce of the word "producers" either independently or in connection or conjunction with the words "of sponges" or with any other word or words, or in any other way which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said corporation owns and operates a vessel or vessels engaged in the sponge fisheries, 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 the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 28, 1934.)

1160. **False and Misleading Brands or Labels and Advertising—Beauty Products.**—Respondents, an individual and a corporation, are engaged in the sale and distribution of beauty products 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.

Respondents, in soliciting the sale of and selling their products in interstate commerce, hereby jointly and severally agreed to cease and desist from the use on labels affixed to the containers of said products sold in interstate commerce of the statement and representation that said face powder is the only face powder which is highly pure and without lead. The said individual and the said corporation also agreed to cease and desist from the use of such statement and representation, or of any similar statement or representation of equivalent meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the face powders of competitors are not substantially pure and/or contain lead, when such is not the fact. The said individual and the said corporation also, jointly and severally, agreed to cease and desist from the use on said labels of the statement or phrase "Paris address: 10 Rue Royale", 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 individual and/or the said corporation has or have a place of business in Paris, France, or which may tend to mislead or deceive purchasers into the belief that the said face powder is of French or foreign origin and/or imported into the United States, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Mar. 2, 1934.)

1161. **False and Misleading Brands or Labels—Waste and Cloths.**—Respondents, copartners, are engaged in the sale of waste and of cloths used for cleaning and polishing motors and other mechanical equipment, in interstate commerce, and in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist forever from the use of the words and figures "15 running feet", "5 double running yards", and/or "contents 2 hemmed pieces" on any brand or label used to mark, brand, describe, or designate any of their

products, which do not consist of 15 running feet or 5 double running yards, or are not hemmed; and from the use of the words and figures "15 running feet", "5 double running yards", and/or "contents 3 hemmed pieces", or of any similar or equivalent words or phrases which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so marked, branded, described, or designated contain 15 running feet, or are hemmed, 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 of the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Mar. 2, 1934.)

1162. False and Misleading Trade Name, Brands or Labels, and Advertising—Carbon Paper and Typewriter Ribbons.—Respondent, a corporation engaged in the manufacture of carbon paper and typewriter ribbons 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, hereby agreed to cease and desist from the use of the word "triplecote" either independently or in connection or conjunction with any other word or words in its advertisements or advertising matter, or as a mark or brand for 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 has been coated with carbon ink three times in the process of manufacture, 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 the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 2, 1934.)

1163. False and Misleading Advertising—Second-Hand Watches.—Respondent, an individual engaged in the business of purchasing used watches from a dealer handling such second-hand merchandise, and in the sale and distribution of the same 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 hereby agreed to cease and desist from offering for sale and selling in interstate commerce, used, or second-hand watches without distinctly, definitely, and clearly stating, setting out, and informing customers and prospective customers that such watches

are used or second-hand watches. The said respondent in soliciting the sale of and selling his said watches also agreed to cease and desist from the use in printed matter distributed in interstate commerce of statements to the effect that he is selling or offering for sale "watches at wholesale * * * always less than one-half retail prices" so as to import or imply, or which may have the capacity or tendency to mislead or deceive customers or prospective customers into the belief that the watches offered for sale and sold by him are new, 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 of the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Mar. 2, 1934.)

1164. False and Misleading Brands or Labels and Advertising—Shingles.—Respondent, a corporation engaged in the manufacture of shingles 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, hereby agreed to cease and desist forever from the use of the words "extra clear" as a brand, mark, or designation for its products, or in advertisements and advertising matter circulated in interstate commerce; and from the use of the words "extra clear" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers respecting the grade or quality of its products, or any of them.

Respondent also agreed that, should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 14, 1934.)

1165. False and Misleading Trade or Corporate Name and Advertising—Nursery Stock and Agricultural Products.—Respondent, a corporation engaged in the sale and distribution of nursery stock and agricultural 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, hereby agreed to cease and desist forever from the use of the word "nursery" as part of, or in connection and conjunction with its corporate or trade name, and from the use of the word "nursery", either independently or in connection or conjunction with such statements and representations as "nurseries suburban

1,000 acres”, and/or “it is to your advantage * * * to feel that your planting is a profitable and permanent one, backed by a nursery of many years’ experience”; or any other similar words, phrases, or expressions which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said corporation owns, controls, or operates a nursery wherein the products sold and distributed by it in interstate commerce were grown and propagated, when such is not the fact. The said respondent further agreed to cease and desist forever from the use on letterheads, or in its advertising matter distributed in interstate commerce of the words “stock certified by Government inspectors”, or of any similar words or expressions which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the certification so referred to is made by 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 of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Apr. 2, 1934.)

1166. False and Misleading Advertising—Dresses.—Fifth Avenue Styles, Inc., a corporation engaged in the manufacture of women’s dresses 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.

Fifth Avenue Styles, Inc., hereby agreed, in soliciting the sale of and selling its products in interstate commerce, to cease and desist forever from the use of the word “linene”, either independently or in connection or conjunction with any other word or words, in advertisements or advertising matter circulated in interstate commerce, to designate and describe products not made of the fiber of flax; and from the use of the word “linene” in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that the products so described are made of the fiber of flax, when such is not the fact; the use of the words “silk”, “crepe”, or “shantung”, either independently or in connection with any other word or words, in advertisements and advertising matter circulated in interstate commerce so as to import or imply that the said products are made of silk, the product of the cocoon of the silkworm; and from the use of the words “silk”, “crepe”, or “shantung” in any way which may have the tendency and effect to confuse, mislead, or deceive purchasers into the belief that the products so described are made of silk, the product of the cocoon of the silkworm, when such is not the fact.

Fifth Avenue Styles, Inc., also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Apr. 2, 1934.)

1167. **False and Misleading Prices and Advertising—Coupons and Advertising Matter.**—United Advertisers, Inc., a corporation, conducted its business under various names and styles of Von Baust Ink Co., Trainer Ink Co., and Kamerette Sales Co. It is engaged in the sale and distribution in interstate commerce of coupons and advertising matter for use by retailers in the sale of their goods and in the redemption of such coupons by exchanging therefor various articles of merchandise. The said coupons and advertising matter, when sold, are shipped from the place of business of said United Advertisers, Inc., in the State of Nebraska to purchasers thereof located in a State or States of the United States other than the State of Nebraska. Upon receipt from the retailers' customers of the required number of coupons, together with the cash payments, said United Advertisers, Inc., ships in interstate commerce to holders thereof the merchandise to which the number of coupons sent in entitles them. United Advertisers, Inc., at all times herein referred to 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.

United Advertiser, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from stating or representing in advertisements and advertising matter circulated in interstate commerce, or through authorized agents, that it is an advertising agency engaged in promoting the sale of the products of the Von Baust Ink Co., or of the Trainer Ink Co., or of any company other than itself, when such is not the fact; stating or representing, directly or indirectly, in advertisements or advertising matter, or otherwise, that the merchandise secured by dealers' customers is free, or costs them nothing, when such is not the fact; advertising or making any false, fictitious, or misleading statements or representations concerning the value of its merchandise or of the price at which the same is sold or intended to be sold in the usual course of trade; and from making any statements or representations that such merchandise is disposed or under terms and conditions that do not afford it a profit, when such is not the fact; the use of any certificate coupon, or other device, in such a way as to import or imply, or which may have the tendency or capacity to mislead or deceive purchasers into the belief that the same are of value in the purchase of merchandise, or that they enable purchasers to obtain such merchandise at prices less than the prices usually and custom-

arily charged for the same in the usual course of business, when such is not the fact; stating or representing, directly or indirectly, in advertisements or advertising matter, or otherwise, that the pen-and-pencil sets which it distributes are "lifetime" sets, and/or that the same are sold under a "lifetime" guaranty, when such is not the fact; and stating or representing, directly or indirectly, in advertisements or advertising matter, or otherwise, that the sums collected from retailers' customers for its inks cover only the cost of its ink, or the cost of packing, mailing, and insurance of the same, when in fact the same was intended to, and did, cover the cost of other merchandise represented as being "free."

United Advertisers, Inc., also agree 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. 2, 1934.)

1168. **False and Misleading Advertising—Photographs and Photo-Engravings.**—Service Engraving Co. is a corporation engaged in the designing and production of photographs and photo-engravings 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.

Service Engraving Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words and phrases "78 years of experience", and/or "the fruits of 78 years of experience are at your service"; and from the use of any other or similar statements or representations of similar import which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said company, or any officer or member thereof, has had 78 years of experience in the photo-engraving business, when such is not the fact.

Service Engraving Co. 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. 20, 1934.)

1169. **False and Misleading Trade Name and Brands or Labels—Cigars.**—Schaefer Cigars, Inc., is a corporation engaged in the manufacture of cigars 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.

Schaefer Cigars, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist 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 brand or label for its products or otherwise to designate or represent such of its products as are not "throw-outs", and from stating or representing, directly or indirectly, that its products are "throw-outs" when such is not the fact; the use of words, figures, or phrase "10¢" or "2 for 25¢ sizes" or "5¢" and "off colors and shapes" either independently or in connection or conjunction with the words "factory throw-outs" or with any other word or words, phrase, or statement, 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 "throw-outs", when such is not the fact; or that the price of said products has been reduced, when such is not the fact; or that said products were manufactured for the purpose and with the expectation of being sold at 5 cents or 10 cents each or at 2 for 25 cents, when such is not the fact; the use of the slogan "Now 2 for 5¢" or any similar slogan or statement of equivalent meaning which may import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, when such is not the fact.

Schaefer Cigars, Inc., also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Apr. 20, 1934.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

0521. Vendor-Advertiser—Varicose Vein, Leg Troubles, Eczema, and Rheumatism Treatments.—A. C. Liepe Pharmacy, Inc. (a Wisconsin corporation) trading under the name of Liepe Methods Institute, vendor-advertiser, of Milwaukee, Wis., is engaged in selling treatments for varicose veins, leg troubles, leg sores, eczema, and rheumatism, and in advertising represented:

LEG TROUBLES VANISH

Don't suffer any longer. The Liepe method relieves and permanently benefits varicose ulcers, enlarged and swollen veins, eczema, etc.

HEAL LEG SORES

The Liepe method of home treatment quickly relieves open leg sores, swelling, varicose veins, milk or fever leg, eczema, etc.

Free from leg troubles.

Don't suffer from the embarrassment and handicap of leg diseases any longer. Enjoy sound, healthy legs.

How to successfully heal varicose veins, ulcers, sores, and other leg diseases by the Liepe method.

There is no need to suffer.

—here is a way to permanently heal your leg—

There is a Liepe method for every leg ailment.

The Liepe method will bring you the joy and happiness of perfect health * * *.

It quickly ends pain, burning, itching, swelling, etc.

Its benefits are permanent and lasting * * *.

The Liepe method for leg sores permanently heals sores regardless of their size and age.

Make up your mind to end your leg trouble.

Even the oldest and most serious cases of leg sores have successfully yielded to the Liepe method.

The Liepe method for leg sores provides the proper scientific treatment for any leg sore, regardless of its age or stage.

Wounds stay healed.

A wound once healed by the Liepe method stays healed.

Eczema * * * Regardless of how long you have suffered or how recently you have contracted the disease, you can find immediate relief and permanent benefits with the Liepe method.

¹Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, June 19, 1933, to Apr. 23, 1934, inclusive. For digests of previous stipulations, see vols. 14, 15, 16, and 17 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602 et seq.

The Liepe method for eczema goes down into the very beginning of the disease and conquers it.

* * * the Liepe method for baby eczema by healing many of the so-called "incurable" cases * * *.

It successfully heals baby eczema, because it reaches the very source of the disease * * *.

* * * the leading scientific way to heal varicose veins, leg sores, and other leg diseases.

Rubber or elastic stockings. These stockings are of absolutely no use in the treatment of open leg sores or milk legs. * * * Instead of helping the leg they harm it a great deal.

No one suffering from leg disease should wear rubber bandages.

Removing enlarged veins or ligating or tying them off are useless. * * * the big specialists of Germany have found that the operation is ineffective.

Whatever your leg disease may be; whatever stage it may be in; regardless of how many remedies you may have tried you can rely upon the Liepe method to help you.

The Liepe methods * * * are acclaimed the most effective means to completely heal leg diseases.

You, too, can forever free yourself from the pain and discomfort of your leg disease.

The Liepe methods * * * are prepared for your particular case. They reach the "roots" of the cause, remove them, and permanently heal your ailment.

Complete Liepe treatment for one leg, \$4.

Complete Liepe treatment for two legs, \$5.

The Liepe method for rheumatism reaches the source of rheumatism.

Respondent admits that in aid of the sale of the commodities it and its said predecessor have sent to prospective purchasers letters bearing the notation:

Personally dictated by W. G. Gehrs, registered pharmacist in charge—

when in truth and in fact such letters were not personally dictated but were circular or form letters.

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 benefits that may be derived from any of said medicinal preparations will be permanent or lasting, or;

(b) Generally that any of said medicinal preparations is a competent treatment for or that it will heal varicose ulcers, varicose veins, enlarged and swollen veins, leg sores, milk or fever leg, leg troubles, leg diseases, eczema, rheumatism, or;

(c) That the use of any of said medicinal preparations will (1) Cause any ailment to vanish; (2) free the user from leg troubles,

pain, or discomfort; (3) end pain, burning, itching, swelling, leg troubles; (4) bring perfect health; (5) produce sound healthy legs; (6) conquer eczema;

(*d*) That the availability of any of said medicinal preparations makes suffering from leg diseases unnecessary, or;

(*e*) That respondent has a treatment for every leg ailment, or;

(*f*) That any of said medicinal preparations will reach the source of eczema, reach the roots of the cause of any ailment, or reach the source of rheumatism, or;

(*g*) That any of said medicinal preparations will be effective in the treatment of leg sores regardless of size, age, stage, severity, condition, nature, or cause of such sores, or regardless of the number of remedies the prospective purchaser has previously tried; or

(*h*) That any of said medicinal preparations will be effective in the treatment of eczema or afford immediate relief regardless of when contracted or how long a person has suffered; or

(*i*) That no one suffering from leg disease should wear rubber bandage; or

(*j*) That rubber or elastic stockings are useless in the treatment of leg sores or milk leg or that such stockings are harmful; or

(*k*) That any of said medicinal preparations has healed or will heal so-called "incurable" cases of eczema; or

(*l*) That any of said medicinal preparations are prepared for a prospective purchaser's particular or individual case; or

(*m*) That a stated price is the price of a complete treatment, unless all medicine necessary for the treatment of the ailment mentioned is furnished at that price; or

(*n*) That the removal of ligating of enlarged veins is useless or that operations are ineffective;

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 medicinal preparations in interstate commerce to cease and desist from—

(*a*) Using the word "institute" as a part of its trade name; and

(*b*) Sending to prospective purchasers form or circular letters bearing a notation that such letters have been personally dictated.

It is also stipulated and agreed that if the said A. C. Liepe Pharmacy, 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. (June 26, 1933.)

0522. Vendor-Advertiser — Feminine Hygiene Products. — Warner's Renowned Remedies Co. (a Delaware corporation), with its place of business in Minneapolis, Minn., vendor-advertiser, is engaged in

selling Dr. H. H. Warner's Vaginal Suppositories and Vaginal Creme, and in advertising represented:

FEMININE HYGIENE

Greatest boon to women is Dr. Warner's renowned suppositories. Make proper hygiene available at all times. Endorsed by thousands of women. Large box, with full instructions, mailed postpaid in plain wrapper, \$1. Send today. Satisfaction guaranteed. Free booklet upon request.

WARNER'S RENOWNED REMEDY COMPANY

2 East 25th Street, Minneapolis, Minn.

and in printed folders and circulars:

DR. WARNER'S RENOWNED VAGINAL SUPPOSITORIES

A necessity to every woman—Safe—Sure—Dependable. For peace of mind. Dr. H. H. Warner's suppositories are effective.

The active ingredients of Dr. Warner's suppositories have a germ-killing power approximately many times as great as pure phenol (carbolic acid).

For the protection of herself against germ life, womankind has heretofore resorted to the use of poisonous compounds, which are harmful. * * * Years ago we did not understand the importance of precautionary personal hygiene. Today we do.

For peace of mind use Dr. H. H. Warner's renowned vaginal suppositories.

DR. H. H. WARNER'S RENOWNED VAGINAL CREME

Indispensable for married women.

A positive protection against invading germs. Safe, sure, dependable.

Vaginal creme does not contain any harmful substances such as bichloride of mercury, corrosive sublimate, carbolic acid, or similar dangerous drugs, yet it possesses all of their powerful antiseptic properties.

Vaginal creme is prepared with a jelly base, which allows its wonderful antiseptic properties to combine readily with the vaginal secretion, and thus it is positively carried by it into every fold and crevice throughout the entire vaginal passage and thus produces a safe, sure, most satisfactory state of complete vaginal antiseptis.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors in that the text indicates to readers that these products are effective contraceptives or abortifacients, whereas the formulas disclose that said preparations are not entitled to the classification of contraceptives or abortifacients, and that they cannot be depended upon to prevent conception or to produce abortion; and, further, that there is no Dr. H. H. Warner at present connected with respondent's business, and the formulas now used by respondent are not those originally prepared by said Dr. H. H. Warner.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents that prior to the receipt of notice of this action it had been for some weeks engaged in a general revision of its advertising, and that recent changes in the formulas and labels for these particular commodities were being made, and that since the said hearing such changes have been completed and submitted to and passed by the Food and Drug Administration of the Department of Agriculture without adverse criticism.

Respondent stipulates and agrees in soliciting the sale of and selling said Dr. H. H. Warner's vaginal suppositories and Dr. H. H. Warner's vaginal creme 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 products in interstate commerce, to cease and desist from describing, labeling, branding, or designating same either inferentially or otherwise as effective contraceptives or abortifacients.

Respondent further stipulates and agrees to eliminate from its future advertising copy and follow-up literature statements, claims, or representations beyond the limits of therapeutic claims permitted on the labels by the Food and Drug Administration of the Department of Agriculture.

Respondent furthermore stipulates and agrees to discontinue the use of the word "doctor" and also the initials "H. H." in its literature advertising the Warner's remedies.

It is also stipulated and agreed that if the said Warner's Renowned Remedies 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. (June 26, 1933.)

0523. **Publisher—Hair Dye.**—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 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. (June 26, 1933.)

0524. **Publisher—Fat Reducing Tea.**—The publisher of a screen 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 fat reducing 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 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. (June 26, 1933.)

0525. **Publisher—Bust Developer.**—The publisher of a moving-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 cream alleged to be an efficient bust developer, 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. (June 26, 1933.)

0526. **Publisher—Hair Balsam and Piles Treatment.**—The publisher of a fireside magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendors of a balsam for the head and hair, and a home treatment for piles.

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, and represents it 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 order the Commission may make or issue upon such complaints against the advertisers, touching the subject matter of said proposed complaints; and that in favor of the Federal Trade Commission and the advertisers herein named, 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 advertisers aforesaid, relating to the subject matter of said proposed complaints. (June 26, 1933.)

0527. **Publisher—Gland Tonic.**—The publisher of a home 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 an alleged tonic to invigorate the glands.

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 and represents:

That it 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 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 Commission may make or issue upon such complaint against the advertiser touching the subject matter of said proposed complaint; and

That in favor of the Federal Trade Commission and the advertiser herein named, 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. (June 26, 1933.)

0528. **Publisher—Feminine Hygiene Appliance.**—The publisher of a home 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 vaginal caps to prevent conception.

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 and represents:

That it 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 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; and

That in favor of the Federal Trade Commission and the advertiser herein named, 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. (June 26, 1933.)

0529. **Publisher—Brassieres.**—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 brassieres 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. (June 26, 1933.)

0530. Vendor-Advertiser—Cream System of Form Development.—Alice Valentine, Inc. of New York City, vendor-advertiser, is engaged in selling a course for women, designated “Miss Broadway System of Form Development”, and in advertising represented:

FLAT-CHESTED?

ALLURING CURVES NOW EASY TO GET!

Beautiful, well-rounded bosom, arms, neck always attract—are always admired.

You, too, can acquire alluring curves this easy, scientific way of form development. Merely try the amazing “Charme Cream”, together with the unique “Miss Broadway Developer”, and note the startling improvement.

Then watch your breasts develop, notice the wonderful change, a change so alluring that you will marvel at the results.

Remember that Charme Cream has been developed for this very purpose. It is a scientific compound of purest and best ingredients, specially made with this one objective. * * *

Do not skip a day. Those half-starved tissues are hungry for the development you offer them. * * *

And most important of all, the new great, large-sized jar of Charme Cream. * * *

some of which statements are deemed by the Federal Trade Commission to be misleading, to the injury of the public and of competitors, in that the representations are so worded as to imply that the said “Charme Cream” has some properties that, externally applied, will feed flesh or build tissue, whereas it is no more than a massage cream to facilitate rubbing; and there is no ingredient in its composition which will penetrate the skin or feed the flesh or build tissue underneath the skin.

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: Said Charme Cream either directly or inferentially as a body nourisher, a flesh feeder or a tissue builder; or from describing same as being other than a massage cream, i.e., a cream to be rubbed on when advertised as part of a method for developing the body.

It is also stipulated and agreed that if the said Alice Valentine, 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. (July 10, 1933.)

0531. Publisher—Philodermine Salve.—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 salve or ointment known as "Philodermine Salve."

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 he has notice. (July 10, 1933.)

0532. Vendor-Advertiser — Fat-Reducing Medication. — Chapman Health Products Co., of Cleveland, Ohio, vendor-advertiser, is engaged in selling *Faid*, an alleged fat-reducing medication, and in advertising represented:

Reduce fat the sane way.

Faid for reducing weight.

Lose loose fat quickly by taking *Faid*, a doctor's prescription for reducing weight scientifically.

Eat what you like.

Take off fat the surest way.

Faid burns up the fat-forming foods.

Removes fat where it is most conspicuous.

Faid has the tendency to reduce the desire for fat-forming foods.

Lose fat without starving.

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 in that:

1. Said preparation cannot be depended upon to reduce fat in all cases.
2. The use of said preparation is not a sure method of reducing fat.
3. Said preparation is not a scientific treatment for obesity.
4. Satisfactory results may not be expected without the observance of a diet.
5. Said preparation will not burn up fat-forming foods or remove fat where it is most conspicuous;
6. Said preparation does not have the tendency to reduce the desire for fat-forming foods.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations to the Federal Trade Commission and represents that it has of its own volition 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; and in particular that such advertising will not represent:

(a) That said preparation can generally be depended upon to reduce fat;

(b) That said preparation is a sure treatment for obesity;

(c) That said preparation is a scientific treatment for obesity;

(d) That reduction in weight may be expected from the use of said preparation without the observance of a diet;

(e) That said preparation will burn up fat-forming foods;

(f) That the use of said preparation will cause fat to be removed where it is most conspicuous;

(g) That said preparation has the tendency to reduce the desire for fat-forming foods.

It is also stipulated and agreed that if the said Chapman Health Products 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. (July 31, 1933.)

0533. Vendor-Advertiser—Thynn Tabs.—Thynn Tab Co., successor to Obesity Research Bureau, Inc., of Fifth Avenue, New York City, vendor-advertiser, is engaged in selling Thynn Tabs and in advertising represented:

Thynn Tabs offer a simple and effective, yet safe method of reducing and acquiring the beauty and grace of a trim figure.

Overweight may be overcome by the Thynn Tab method.

The Thynn Tab method is scientific—and has been painstakingly developed to offer overweight reduction for the four types of excessive fat people * * *. Now you may have that beautiful figure you've wanted.

Check your weight and at the first warning use the Thynn Tab method which restores proper balance, the lack of which causes overweight.

Learn how to reduce safely and effectively with Thynn Tabs.

Learn why overweight shortens your natural span of years.

Fat is dangerous—a menace to life.

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 use of said medicinal preparation will, of itself, cause a reduction in weight, produce a beautiful or trim figure, or restore a proper balance, or

(b) That the use of said medicinal preparation in conjunction with the observance of any regimen prescribed by respondent will cause a reduction in weight in all cases, or

(c) That overweight shortens life; or

(d) That fat is dangerous or a menace to life; and that all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees in soliciting the sale of said medicinal preparation to cease and desist from using the word "overcome" to describe any results that may be expected from the use of said preparation alone or in conjunction with any regimen prescribed.

Respondent further stipulates and agrees that in any advertisements hereafter published in aid of the sale in interstate commerce of any method or system for reducing weight, of which the use of said preparation is a part, the essential details of all parts of such method or system will be stated in equally conspicuous terms. (July 31, 1933.)

0534. Vendor-Advertiser—Christmas Cards.—Charley Schwer, of Westfield, Mass., vendor-advertiser, is engaged in selling Christmas cards and in advertising represented:

8 fast sellers pay Christmas card salespeople up to \$12 daily. Every call a sale. 3 big profits every call.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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

(a) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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. (July 31, 1933.)

0535. **Vendor-Advertiser—Stomach Ulcer Treatment.**—Philip H. Reed and W. M. Thebaut, of Atlanta, Ga., trading as Volgar Co., vendor-advertiser, is engaged in selling Volgar treatment for stomach ulcers, etc., and in advertising represented:

STOMACH

Troubles healed, lasting relief from ulcers, hyperacidity, gas pains, indigestion. Correct the cause with this inexpensive guaranteed treatment. No operation. Liberal diet. Write today for information.

How to recognize hyperacidity, gas, indigestion—which often lead to ulcers.—When the stomach is out of "chemical balance"—too much acid in the system—all kinds of stomach disorders may arise, such as indigestion, gas pains, sour stomach, constipation, nervousness, dizziness, bad breath, bad taste in the mouth, headache, nausea, poor appetite, heart palpitation, and serious stomach ulcers. Acidity is not usually a temporary condition, but a disease, and should be treated as such with the best treatment you can secure. To let these troubles continue may lead to dangerous and serious results.

Stomach ulcers.—Ulcers, regardless of their location are nothing more or less than raw sores, and when located in the stomach, proper treatment involves, as much as possible, the relief of the ulcers from irritation by foods, and acids. The proper treatment should furnish a protective coating for the inflamed or ulcerated tissues, thus protecting them, and giving them a thorough opportunity to heal. The purpose of the Volgar treatment is to heal ulcers, whether located in the stomach, duodenum, or lower tracts.

The purpose of Volgar treatment is to correct hyperacidity and assist in healing ulcerated stomach. Operations, in ulcer cases, are not always successful and most people dread and are fearful of the knife. They are usually expensive and cause a spending of considerable time in a hospital and a long period in recovering strength. An operation removes the ulcer, but does not correct the cause of the trouble. Therefore ulcers may occur again. Stomach ulcers are a serious matter. If allowed to grow they attack the deeper structures of the stomach walls and in time may prove fatal.

Volgar is a scientific preparation, compounded after a careful study of the causes of stomach troubles, and is designed to reach the source of your trouble and correct the cause of your trouble. We realize that you desire permanent and lasting relief, and this is just what Volgar should bring to you. This treatment is a safe, sane, quick-acting, and effective remedy for hyperacidity and stomach ulcers, and other stomach disorders caused by these troubles.

We honestly believe that no better preparation, for the treatment of acidity and stomach ulcers can possibly be compounded than Volgar treatment. The

taking of plain, raw soda, which affords only temporary relief, may eventually cause a condition that will prove worse than the original trouble.

TONIC EFFECT OF VOLGAR

Volgar treatment has a wonderful effect as a tonic for the stomach. Most sufferers feel a decided beneficial effect within a few days after beginning this treatment. Those who are run-down, emaciated, and under weight usually begin to gain in weight within a short time, after beginning this treatment, and gradually continue to gain until they are back to their normal weight and health.

Volgar treatment corrects this trouble (constipation), in most cases, without the necessity of other laxatives or purgatives. Volgar does this work smoothly and safely. It should absolutely regulate the bowels to normalcy if taken according to directions.

Volgar treatment is in no sense a "patent medicine", but is a carefully compounded prescription formula and made of the finest ingredients.

It is of the utmost importance that you begin treating your stomach trouble as soon as possible.—Why continue to suffer with the tortures of stomach ulcers, or other stomach disorders and complaints, when you should be able to correct and rid your system of these disorders, which cause these ailments, with Volgar treatment, which is sold under an iron-clad guarantee of complete satisfaction.

STOMACH SUFFERERS—ULCERS, ACIDITY, GAS, PAINS, INDIGESTION

Quick Relief—No Operation

These and similar stomach disorders are quickly banished with Volgar treatment with no loss of time and without a starvation diet. It is fully guaranteed to give you complete satisfaction.

STOMACH TROUBLES HEALED

Why suffer with ulcers, hyperacidity, gas pains, indigestion, and similar disorders? Treat the cause at a moderate cost at home with a noted doctor's treatment. Quick and permanent relief. No operation, no loss of working time, liberal diet. Volgar is guaranteed to give complete satisfaction or money refunded.

You need no longer fear there is no hope, for it is our sincere and honest belief that our Volgar treatment is the very remedy you need to restore your stomach to healthy, normal condition. If you are troubled and suffer from stomach ulcers, acidity, gas pains, indigestion, toxic condition, chronic constipation, or any similar form of stomach disturbances, you owe it to yourself and your family to give Volgar a trial with no risk to you, for this treatment is backed by a guarantee of complete satisfaction or your money refunded in full.

If you really have some form of stomach trouble, we feel sure if you actually knew what lasting benefit Volgar—may bring to you—your order would have come in long ago, and no doubt by this time you would be writing us a happy and joyous letter telling of the wonderful benefit received.

Volgar is a remedy of the very highest quality. This splendid preparation is a noted doctor's prescription formula, and used by him for many years in his practice for the treatment of various stomach ailments.

It is our honest and sincere belief that no better preparation can be made for the treatment of ulcers, hyperacidity, gas pains, sour stomach, toxic condition, constipation, and similar forms of stomach disorders than Volgar.

The purpose of Volgar is to reach the root of your trouble and correct the cause of your trouble. We know that you want permanent and lasting relief—not merely temporary relief.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, in that:

(a) The preparation is compounded from a U.S.P. formula and contains bismuth, magnesia, sodium bicarbonate, and calcium, with starch as a binder.

(b) While this preparation can be considered as a mild antacid and laxative, of benefit in sour stomach, hyperacidity, colic due to gas, and in constipation, and due to the bismuth content it might have a soothing effect on the irritated stomach caused by hyperacidity, it would not constitute a treatment for stomach ulcers or heal stomach troubles as stated in the advertising.

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 tablets—Volgar treatment—are anything but a mild antacid and laxative.

(b) That said tablets are an effective treatment or beneficial in the treatment of ills of the stomach other than sour stomach, hyperacidity, colic due to gas, and constipation.

(c) That said tablets will heal stomach troubles.

(d) That said tablets will afford permanent or lasting relief from ulcers, hyperacidity, gas pains, indigestion, or constipation.

(e) That said tablets will reach the root or correct the cause of ulcers, hyperacidity, gas pains, indigestion, or constipation.

(f) That said tablets will afford relief from pain and ills due to ulcers of the stomach or duodenum unless such representations are limited to conditions caused by hyperacidity and so specified in equally conspicuous terms in direct connection with the representation.

(g) That such tablets banish or will rid the system of disorders which cause ulcers, hyperacidity, gas pains, indigestion, or constipation.

(h) That said tablets will restore the stomach to a normal condition.

(i) That said tablets are compounded from a noted doctor's prescription formula.

and all representations and statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said Philip S. Reed and W. M. Thebaut, or either of them, 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 them in the trial of the complaint which the Commission may issue. (July 31, 1933.)

0536. Vendor-Advertiser—Iron.—The Sunshine Products Co. of Chicago, Ill., vendor-advertiser, is engaged in selling the Sunshine iron and in advertising represented:

[Illustration of gas iron]

ENDS DRUDGERY OF IRONING

BIGGEST MONEY MAKER OUT

First instant lighting iron ever offered agents—make \$75 a week—every woman wants this newest invention!

Hundreds now easily making up to \$15 a day, selling Sunshine iron. Start now! Try 15 days—know why this is the most convenient, economical iron.

Free—Information, liberal agent's proposition, 15 days trial offer! Write today!

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

(a) That respondent will not make unmodified representations or claims of earnings of sales in excess of the average earnings of the active full-time sales persons of respondent achieved under normal conditions in the due course of respondent's business.

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business.

(d) That in future advertising where a modifying 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. (July 31, 1933.)

0537. Vendor-Advertiser—Dresses and Frocks.—World's Star-Mallock, Inc., of Grand Rapids, Mich., vendor-advertiser, is engaged in selling dresses and frocks and in advertising represented:

Earn \$15 commission daily. Free dresses. Sell frocks, 3 for \$3.98. Amazing values, stunning fabrics, enchanting styles, quick sales. Experience unnecessary. Outfit free.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business. (Aug. 7, 1933.)

0538. Vendor-Advertiser—Imitation Diamonds and Rings.—J. R. Stone, of Wheeling, W.Va., trading as Spanish Diamond Co.; Chinese Ring Co.; and National Jewelry Co., vendor-advertiser, is engaged in selling imitation and simulated diamonds and rings of cheap quality and in advertising represented:

Looks \$250, beautiful Spanish imitation diamond for \$1.48

Baffles experts. White-gold-appearing sterling. Ladies' or gents', in gift box. Send no money. Pay postman \$1.48 plus postage. Money back if not delighted! State size. Order now! Address: Spanish Diamond Co., Dept. 14, Wheeling, W.Va.

Beautiful life-time white-gold-appearing chromium reproduction of a \$300 diamond ring. Baffles experts. Ladies' or gents' in rich gift box. Send no money. Pay postman 99¢ plus postage (or, remit \$1 with order and we will pay postage). Money back if not delighted! Order at once! Spanish Diamond Co., Dept. 16, Wheeling, W.Va.

FREE RING OFFER

To introduce our blue-white rainbow flash gems, we will send free a 1 kt. Spanish imitation diamond ring (looks like \$150 stone), for this ad and 15¢ to help pay advertising and handling expense. National Jewelry Co., Dept. 25-D, Wheeling, W.Va. (2 for 25¢.)

RARE CHINESE RING

Beautifully embossed with potent "Lucky" symbols of the Orient. You will prize one of these unique rings. 30¢ each—postpaid—two for 50¢. Please state size. Chinese Ring Co., Box 894, Wheeling, W.Va.

FREE RING OFFER

To introduce our blue-white rainbow flash gems, we will send free—a 1 kt. Spanish imitation diamond ring (looks like \$150 stone), for this ad and 15¢ to help pay advertising and handling expense. National Jewelry Co., Dept. 25-D, Wheeling, W.Va. (2 for 25¢.)

Dear friend: Enclosed is your Spanish diamond—yours to keep—a present from us * * *. Spanish diamonds do not lose their "fire." It is a flawless, scientific reproduction of the genuine diamond * * *.

Now—that you have seen the beauty of this gem, you will naturally want one mounted in a more valuable and artistic ring than we can afford to give you free of cost.

The beauty of a Spanish diamond is so enhanced when mounted in a heavy artistic ring that it is practically impossible to tell it from a genuine diamond costing hundreds of dollars.

* * * they will wear a lifetime.

* * * we are able to make the low prices quoted—about one-half of what your local jeweler would have to charge you for the work of mounting the gem in a ring.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, in that no such thing as a "Spanish diamond" exists, such trade name having been coined by respondent as a means of marketing cheap simulations of diamonds made of glass or composition; that the stones or imitation stones used in these rings are not "gems"; that the rings do not have the appearance of either white gold or platinum, nor do these counterfeit jewels baffle or deceive either experts or jewelers or anyone else slightly familiar with such commodities; and there is nothing Chinese about the so-called "rare Chinese ring", except the emblems on it.

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:

(a) That respondent's stones "baffle" experts or any other persons familiar with diamonds;

(b) That said imitation stones look like gems worth \$250 or \$300 or \$150 or any other substantial sum; or that they "cannot be told from genuine diamonds costing many hundreds of dollars";

(c) That respondent's imitation stones "do not lose their fire", or are "flawless", or are "scientific" reproductions, or any "reproductions" whatsoever, of genuine diamonds, or will "wear a lifetime";

(d) That the prices quoted by respondent for mountings are "about one-half" those charged by local jewelers, unless and until such be the fact;

(e) That such stones are sent as a "present" from the respondent, or are to be had "free", so long as the purchaser must pay money for same.

Respondent furthermore stipulates and agrees to cease and desist from:

(f) Designating or representing any stone that is not a genuine diamond, as a "Spanish diamond", or using the word "diamond" in any way to designate or describe such stone unless modified by the word "imitation" or its equivalent;

(g) Designating or representing as a "gem" any stone or imitation stone which is not in fact a gem, to wit, a precious or semi-precious stone;

(h) Using any geographical term to designate or describe any article not imported from the country or place indicated by said geographical term;

and all representations and statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said J. R. Stone 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. (Aug. 7, 1933.)

0539. Vendor-Advertiser—Tire Patch.—J. M. Dubin, trading as Everbrite Manufacturing Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling automobile accessories, including a rubber tire patch designated "shok pruf tire patch", and in advertising represented:

SHOK — PRUF — TIRE — PATCH

CAN'T BE BRUISED

Up to \$100 a week selling to stores

If you can sell, we want to get in touch with you. We have a proposition that commands the respect of any man.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publish-

ing and circulating, or causing to be published and 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:

(a) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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 type used in printing such statement, claim or representation of earnings. (Aug. 7, 1933.)

0540. Vendor-Advertiser—Greeting and Christmas Cards.—B. Fidelman trading as Artistic Card Co. of Elmira, N.Y., vendor-advertiser, is engaged in selling greeting cards and Christmas box assortments and in advertising represented:

Up to \$5 profit on every call you make.

You can make house-to-house calls with the assurance of selling one or more box assortments on every call.

It is easy to earn \$3 to \$4 an hour.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

(a) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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; and

(d) That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full time salespersons of respondent achieved under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said respondent 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. (Aug. 7, 1933.)

0541. Vendor-Advertiser—Sign Specialties.—Neon Products, Inc., Lima, Ohio, vendor-advertiser, is engaged in selling Neon sign specialties and in advertising represented:

Revolutionary—low-priced Neon clock sign with 300 letter changeable sign outfit free.

Pays you up to \$17 an hour.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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 stipulated and agrees:

(a) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business; and

(c) That if in future advertising a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Aug. 7, 1933.)

0542. Vendor-Advertiser—Toilet Preparations.—Velvetina Co., Inc., of Omaha, Nebr., vendor-advertiser, is engaged in manufacturing and selling various toilet products designated "Velvetina", "Egypta", and "Ladyfair", and in advertising represented:

HELP WANTED

Lady district manager—to travel, appoint local representatives. \$50-\$75 weekly, plus big commissions on representatives' business. Nationally known toilet goods line. Permanent position, wonderful future. Experience unnecessary. Write at once. Velvetina Co., Inc., Omaha, Nebr.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said respondent 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. (Aug. 9, 1933.)

0543. Vendor-Advertiser—Feminine Hygiene Preparation.—Lester A. Stern and Peter S. Banff, of Chicago, trading as Progressive Laboratories, vendor-advertiser, are engaged in selling H.Y.G. tablets for female use, and in advertising represented:

Women! Science meets demand for necessary protection. German scientists have developed an amazing formula now presented as H.Y.G. tablets. Pure, safe, convenient, and a reliable antiseptic for feminine hygiene, they provide

the necessary protection to womanhood. Destroys germs without harming delicate membranes. Dry, greaseless, nonpoisonous, nonirritating, and stainless. No water, liquid antiseptic, or cumbersome accessories needed. Comes in small, compact package. An effective deodorant.

They provide the necessary protection to womanhood. (Ex. 4.)

Solved! An important problem of modern womanhood. The intelligent practice of feminine hygiene is acknowledged by physicians to be of vital importance to good health.

Now with the aid of H.Y.G. tablets, a formula endorsed by leading physicians, modern wives may enjoy the benefits of feminine hygiene without its attendant problems. * * * Though powerfully germicidal, they are soothing to delicate membranes. (Ex. 5.)

The tablets quickly dissolve, liberating oxygen which instantly penetrates all the folds and crevices of the mucous membranes. The action provides complete protection, guarding against infectious germs often present in the vagina.

In spite of their powerful effect upon bacteria, there is no fear of any damage or harm to the delicate tissues. (Ex. 6.)

No longer need the modern young wife depend upon confusing and misleading information secured from other women equally misinformed.

Proper protection—problem of modern womanhood now solved.

Complete protection now possible at all times at home or traveling.

These dainty snow-white tablets, whose formula has been used in Germany for more than 20 years, are being quickly adopted in America by thousands of fastidious women who are awake to the new, modern, intelligent practice of feminine hygiene.

The dawn of a new method of feminine hygiene.

Scientific German formula, endorsed by eminent physicians.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated and misleading, to the injury of the public and of legitimate competitors, in that said tablets are not a germicide that will act as a contraceptive; will not provide protection to womanhood against conception; and are not endorsed by leading physicians in America; neither do the respondents own, operate, or control a laboratory.

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:

That said tablets may be used or relied upon as a contraceptive, and all representations and statements equivalent thereto in form or substance.

To overcome the impression upon the mind of the reader that they are and may be used and relied upon to prevent conception, respondents agree to print in equally conspicuous type in direct connection with every statement inferring or indicating that the tablets are

powerful germicides or capable of preventing conception, notice that the tablets will not kill the human sperm, are not intended for use as a contraceptive, and cannot be relied upon for such a purpose.

It is also stipulated and agreed that the word "laboratories" will not be used as any part of their firm or trade name unless the respondents acquire and own, operate, or control a laboratory where such tablets are made.

It is also stipulated and agreed that, if the said respondents or either of them should 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 them in the trial of the complaint which the Commission may issue. (Aug. 9, 1933.)

0544. Vendor-Advertiser—Electric Water Heater Attachments.—E. Nichols, trading as Kwik Electric Co., formerly Service Electric Co., Irvington, N.J., vendor-advertiser, is engaged in selling electric water-heating attachments for use at spigots, and in advertising represented:

Men—realize your ambitions! Earn \$15 or more daily by hiring others to work for you. Write at once for particulars. Service Electric Co., 27 Elizabeth Avenue, Newark, N.J.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said respondent 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. (Aug. 9, 1933.)

0545. Vendor-Advertiser—Hair Dye.—A. Rhodes Co., Inc., Lowell, Mass., vendor-advertiser, is engaged in selling hair-coloring treatments and preparations and in advertising represented:

Gray spots and faded hair soon look natural again.

It is only because "Rejuvenator" is 100 percent successful that I can give such a binding guarantee as this.

Now stop and realize how much natural, young-looking hair is going to improve your appearance.

It restores beautifully * * *.

It keeps your hair in its youthful shade.

Thousands of our customers use it regularly to keep their hair dark, natural, and beautiful.

The natural color is restored slowly and evenly in about 2 weeks' time, and so gradually that the color becomes natural and glossy without the change being noticeable to your friends. Rejuvenator is actually good for the hair; it rids the scalp of dandruff, and the small quantity of alcohol acts as a tonic and stimulates the growth of new hair.

In a few days you notice the gray hair is becoming darker, and in from 1 to 3 months the color looks perfectly natural again.

I am sure it would surprise you to know of the many thousands of people (both men and women) who keep their hair dark and youthful with "Rhodes' Gray Hair Rejuvenator."

Letters from users have proved "Rejuvenator" to be nearly 100 percent successful * * *.

Rejuvenator is unlike the usual restorers and colors beautifully and naturally without streaking.

* * * this modern, successful treatment would make you look many years younger—simply by imparting a natural, youthful beauty to your hair.

* * * how it contained purifying, antiseptic ingredients which not only strengthened the scalp but actually stopped dandruff and itching.

When the second and third bottles are used, the color quickly deepens to a natural attractive shade.

Hair that was originally a sandy or blond shade soon looks pretty and natural again. On the other hand, white hair that was originally black will require a much longer treatment—sometimes a full 3 months—for the color to deepen and become natural again.

* * * it is simply a question of time before the color will deepen to the original shade of your hair.

* * * if someone offered to bring back all the natural color and beauty to your hair and told you that it would make you look 10 years younger—what would you give?

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 that respondent's product will:

(a) Make the hair natural again, or give it a natural appearance, or color it naturally, or bring back or restore the natural color; or

(b) Bring back or restore its youthful shade, or deepen the color to its original shade; or

(c) Rid the scalp of dandruff, or actually "stop" dandruff; or

(d) Is 100 percent successful, or nearly so; and all representations and statements equivalent thereto in form and substance.

Respondent furthermore, as an evidence of its good intention, will publish, in connection with printed testimonial letters that describe the resultant color of the hair as "natural", a statement in substance as follows: "Read this: While man can produce a shade so perfect and 'so like the natural color' that most people are entirely satisfied, it must be understood that the color is not produced by nature, but is imparted to the hair by the preparation used."

It is also stipulated and agreed that if the said A. Rhodes Co., Inc., should ever resume or indulge in any practice violative to 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. (Aug. 9, 1933.)

0546. Vendor-Advertiser—Greeting Cards and Folders.—G. V. Holton, trading as Engraveo-Craft, of Minneapolis, Minn., vendor-advertiser, is engaged in selling greeting cards and folders in assorted lots and in advertising represented:

Make up to \$2,000 between now and Christmas selling deluxe box assortments of Christmas cards.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

(a) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Aug. 9, 1933.)

0547. **Vendor-Advertiser—Razor Blade Stropper.**—Kriess Kross Corporation, St. Louis, Mo., vendor-advertiser, is engaged in selling a razor blade stropper designated "Automatic Shaving Wizard", and in advertising represented:

EXTRA MONEY FOR YOU

No lay offs, no cut wages on this job! Just stick this invention in your pocket, demonstrate to friends, and collect profits up to \$75 in a week!

and in follow-up literature:

Now make up to \$35 a day passing out free gifts.

Earn up to \$150 a week in a new easy way passing out free gifts.

Men have earned over \$50 a day simply doing this!

Now at last! Up to \$150 a week profit passing out free gifts—guaranteed success offer.

New, sensational, big-money plan!

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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 stipulate and agree—

(a) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Aug. 14, 1933.)

0548. **Vendor-Advertiser—Charms, Books, Charts, and Novelties.**—Theodore Wilson Messick, of Camden, N.J., vendor-advertiser, is engaged in selling charms, talismans, symbols, curios, divining rods, gazing crystals, herb remedies, and books on magic and black arts, marriage and sex problems, money schemes, hypnotism, fortune-telling, astrology, and luck, and in advertising represented:

LOVERS' PERFUME

By Many Called "Love Drops"

A new creation, an enchanting powerful aroma. Rich and poor, old and young, surrender to its charm. \$2.50 size for \$1 postpaid, with instructions for How to Woo and How to Win.

Address T. W. Messick, 1136 S. 7th St., Camden, N.J.

YOUNG AT 250 YEARS OF AGE

Nature's Remedy May Some Day Prove to be the "Fountain of Youth."

Li Chung-Yun, of China, was born in 1677. In the year 1827 the Chinese Government sent official felicitations to him on attaining his 150th birthday. He has married and outlived 23 wives and is now living with his 24th at the age of 252 years.

For 200 years ginseng root has been a part of his diet every day.

Note.—We can furnish Ginseng Root at 35¢ per box, or 4 boxes for \$1.

We owe it to ourselves and to our Creator to retain our youth as long as possible.

CURE YOURSELF NATURE'S WAY

CALUMET HERB

LAXATIVE NATURE'S REMEDY

Save money by ordering 2 boxes and learn for yourself how quickly this wonderful nature remedy will bring health and happiness to every member of your family.

and in printed catalogs and circulars:

HIDDEN TREASURES

How and Where to Find Them

ANCIENT AND MODERN DIVINING RODS

The Latest Book on This Great Subject—a \$2 Investment That May Mean a Fortune to You

Don't buy or sell real estate until you have investigated by this wonderful psychic power in yourself.

By the same gold, silver, copper, iron, salt, zinc, and other precious minerals were located all through France, England, Switzerland, and Germany; some of

the foremost geologists and miners employed this wonderful power successfully to locate these precious jewels of untold wealth and blessing to mankind. Some of the best, richest, and most productive mines of the world have been located by the aid of this wonderful power of divination. My father, who was endowed with this power, located his first well in Illinois on his farm and obtained the best flow of water ever located there.

I discovered that I, too, had this amazing magnetic power to attract myself whatever I desired and needed; have since taught many persons, of both sexes, to use this power successfully for themselves and others, doing much good in their neighborhood with these sciences and making money by the proper use of them; likewise making for themselves an immortal name, surrounded by fame—for from far and near they were called to locate water, mines, treasures, etc., receiving good pay for their special work of divining and healing the sick of all diseases.

SIXTH AND SEVENTH BOOKS OF MOSES—THE MYSTERY OF ALL MYSTERIES OR MOSES' MAGICAL SPIRIT ART

Contains exact copies of over 125 seals, signs, emblems, etc., used by Moses, Aaron, Israelites, Egyptians, etc., in their astonishing magical and other arts.

The Sixth and Seventh Books of Moses is pronounced the most wonderful work ever published. So true is this that millions never undertake any important step in life relating to finance, exchange, health, and the general welfare of man without seeking from its pages advice and guidance.

Volume I of the Sixth and Seventh Books of Moses, as translated from the original writings, contain all that is embraced by the white and black art, together with the ministering spirits which were hidden from David, the father of Solomon.

These engravings are exact copies of those used by the Israelites and Egyptians to accomplish their designs for good or evil, and are separately explained.

Price, postpaid, \$1

ORIGINAL SEALS ON GENUINE OLD TIME PARCHMENT AS CONTAINED IN THE SIXTH AND SEVENTH BOOKS OF MOSES

Any of the above seals, on genuine old parchment, for 50 cents each—any 5 for \$2—or the entire set of 34 seals for \$12.

THE NEW ILLUSTRATED SILENT FRIEND—MARRIAGE GUIDE AND MEDICAL ADVISER

Do you want luck? Do you want to be successful in love? Do you want others and make them care for you? Why envy others when you may be happy and prosperous yourself?

CURIOUS SECRETS NEVER BEFORE PUBLISHED—NOW YOURS

Price, postpaid, \$1

ALBERTUS MAGNUS EGYPTIAN SECRETS

White and Black Art for Man and Beast

**The Book of Nature and the Hidden Secrets and Mysteries of Life Unveiled;
Being the Forbidden Knowledge of Ancient Philosophers**

Price, postpaid, \$1

POW-WOWS OR THE LONG LOST FRIEND

Containing a Collection of the Most Mysterious, Wonderful, and Valuable Arts and Remedies for Man as Well as Animals ever Discovered

* * * whosoever has this book with him cannot die without the Holy Corpse of Jesus Christ, nor drown in any water; nor burn in any fire; nor can unjust sentences be passed upon him. Here are a few of the contents of this rare work:

How to compel a thief to return stolen things, how to extinguish fire without water, how to stop blood, how to destroy witches, how to find all kinds of metal, to banish all kinds of pain, how to make cattle return to the same place, to win every game one engages in, lucky and unlucky days, how to compel a thief to stand still, how to fasten or spellbind anything, and hundreds of rare and valuable secrets never before disclosed.

Price, postpaid, \$1

400 WAYS FOR A WOMAN TO MAKE MONEY OR MONEY FOR THE WOMAN WHO WANTS IT

This book gives you the golden opportunity you have always been looking for—to be independent financially! At last a way has been found for you to earn money right in your own home, using your spare time or full time. Now you may have the luxuries you have always craved.

No Special Ability Necessary

How is this done? Simply by following the directions contained in this marvelous book.

Price, postpaid, \$2.50

GENUINE SUPERSTRENGTH MAGNETIC LODESTONE

There is something mysterious and attractive in the magnetic power of this superstrength lodestone. Many people call it the luck bringer. They carry it as a luck piece, claiming that they are lucky and successful in everything they undertake and would not be without it for any price.

Price per pair, in a chamois bag, \$1

GENUINE SUPERQUALITY MAGNETIC SAND

It is believed by many that this genuine superquality magnetic sand has a mysterious and attracting power. It will amaze you.

One package in a chamois bag, \$1

25 LESSONS IN HYPNOTISM—BECOME AN EXPERT OPERATOR

No greater wealth can be gained than through a knowledge of hypnotism. He who can control the body and mind of whomsoever he chooses, to him every hour is rich with love, every moment jeweled with joy, and the world's purse strings are at his command. By this mysterious power you can enter the sacred portals of the mind, and greater still by the wave of the hand you can make that mind do your bidding. It is a great scientific discovery, for through its wonderful power disease can be banished as if by magic, and it is

the only soother of pain that has no bad after-effect. Through its power any bad habit can be cured, and from it you can step from poverty's shadow into the glory of wealth's blessings.

Price, postpaid, \$1

ONE-DOLLAR BOOK REDUCED TO 50 CENTS—WIZARD'S MANUAL

Secrets of Magic, Black Art, Ventriloquism, and Hypnotism Fully Explained and Illustrated

In this advertisement we mention but a few of the many wonders that every person can perform after reading the Wizard's Manual. It actually contains more information than all other such books combined.

Every secret is unfolded so clearly that even children can learn them.

600 Ways to Get Rich When Your Pockets Are Empty—A \$5 Book for \$1

It contains all the information necessary to commence making money at once, and plenty of it, although you may be penniless. It will turn all the rivulets leading to wealth toward you. It will drive poverty from your door, and it has made millionaires out of beggars. It started a boy in a business that pays him a profit of \$20 a day.

Secrets of Black Arts

All who are interested in the study of the hidden mysteries of the black arts will find that this rare book contains much valuable information upon the occult science of spirit rappings, witchcraft, magnetism, astrology, palmistry, mind-reading, spiritualism, table-turning, ghosts, and apparitions, omens, lucky and unlucky signs and days.

Price, postpaid, 65 cents.

FORTUNE-TELLING CRYSTAL BALL

Answers all questions—Love, marriage, finance, your wish, home, children, luck, surprise, etc.

Price, postpaid, 50 cents

700 SECRETS

Or How to Get Rich When Your Pockets Are Empty

A \$2 book for 50 cents. Reader, are you poor? This may be the stepping-stone to your future prosperity. It will lead you to something that is just as sure to pave your way to fortune as that you now exist. A bright future is yours if you only stretch out your hand and grasp the golden key that unlocks the vault that opens to your astonished gaze the hidden treasure.

The Book of Luck

The various subjects treated in this remarkable book have engaged from time immemorial the rapt interest of the countless nations and tribes into which the races of mankind and their religions and philosophies have been divided. From the most ancient annals of the Chinese, Hindoos, Hebrews, and other great peoples of high antiquity, we have the evidence of that implicit faith reposed by them in the efficacy of talismans, amulets, charms, etc.,

as tokens of good luck and of signs presaging future events for either weal or woe.

There are thousands upon thousands of people who believe in luck. They point out with certain conviction the many instances where no doubt luck must have played its part. Many believe in lucky numbers, lucky jewels, lucky stones, lucky master keys and the many mysterious tokens which appear to exert their influence through all stages of life.

Price, postpaid, 65 cents

ROOTS AND HERBS

Nature's Remedies

Why use poisonous drugs when nature in her wisdom and beneficence has provided in her great vegetable laboratories—the field and forest—relief for most of the ills of mankind?

If you are interested in good health, it will pay you to keep this catalog handy and read this root and herb section over often. It will pay you to save this catalog for future reference.

All Formulae Guaranteed Harmless

The formulas listed herein have been contributed from various countries. Each one has been carefully tested * * *.

Herb treatments indicated for:

Typhoid fever	Worms, round
Measles	Worms, seat
Scarlet fever	Skin diseases
Chickenpox	Prickly heat
La grippe	Eczema
Tonsillitis and quinsy	Boils
Catarrh	Blackheads
Earache	Hives or nettle rash
Neuralgia	Poison ivy
Colds or roup in fowls	Itch or scabies
Neurasthenia or	Urinary diseases
Nervous prostration	Bright's disease
Stiff neck and joints	Gravel
Headache	Inflammation of the bladder
Toothache	Inflammation of the urethra
Bruises	Inflammation of the kidneys
Eruptions	Obesity
Sciatica	Incontinence of the urine
Lumbago	and bedwetting
Rheumatism	Menstruation
Muscular rheumatism	Scanty menses
Hay fever	Painful menses
Pneumonia	Profuse menses
Weak lungs—consumption	Malarial fever
Dyspepsia—weak stomach	Diphtheria and croup
Acute indigestion	Smallpox
Colic, infants	Mumps
Bowel ulcers	La grippe or influenza
Appendicitis	Laryngitis

Headaches	Diabetes mellitus
Sore eyes	Diabetes insipidus
Distemper in horses or dogs	Dropsy
Pneumonia or pleurisy in horses	Female disorders
Neuritis	Delayed menses
Backache	Suppressed menses
Aching feet	Leucorrhoea or whites
Cramps	Vomiting and morning
Sprains	Change of life
Sores	Tumors on the womb
Wounds	Ulceration of the womb
Gout	Arteriosclerosis or hardening of the arteries
Bronchial troubles	Palpitation of the heart
Bronchitis	Neuralgia of the heart
Pleurisy	Bleeders disease
Asthma	Heart dropsy
Congestion of the chest	Hysteria
Stomach and bowel disorders	Baldness
Constipation	Spasms
Dysentery	Prostatic affections
Stomach ulcers	High blood pressure
Cramp or colic	Sickness
Gall stones	Inflammation of the womb.
Tape worm	Anemia
Rickets	Heart disease
Jaundice—liver trouble	Falling of the womb
Piles	Epilepsy fits or falling
Shingles	Disease
Ingrowing toe nails	Fatty heart disease
Fever blisters or cold sores	Goitre or big neck
Ringworm	Catarrh
Scalds, burns and chapped hands	Bad blood
Catarrh of the bladder	Affections of the throat
Gonorrhoea and gleet	Tobacco habit
Inflammation of the kidneys	

INDIAN HAMMERED GOOD LUCK BRACELET

Fashion's Latest Fad

Whether you believe in luck or not, luck has played an important part in the lives of most everyone.

Great Minds Believe in Luck

Luck is an element that enters into every undertaking whether you are aware of it or not. No matter how much we decry it, luck prevails and plays an important part in the lives and mental attitude of all of us.

Price, prepaid, silver plated, \$1.25

TO BE SUCCESSFUL IN LOVE OR IN BUSINESS YOU MUST HAVE A GOOD LUCK COIN

Good Luck—Good Will—Good Health

Luck—that which happens to one, seemingly by chance, fortune, favorable fortune, good luck.—Webster.

From the beginning of time down through the ages, the most famous characters of history are said to have believed in luck and have carried or worn some kind of talisman or luck charm to ward off the so-called evil spirits. Kill the jinx, and bring unto them good luck, health, wealth, and happiness. Not only the prophets, kings, rulers, and wise men of old enjoyed this belief, but the most successful of our present-day statesmen, writers, historians, politicians, leading lights of the theatrical profession, and men and women in all walks of life believe in luck.

Carry a coin for luck. Believe in it for luck and you will have luck.

Price, postpaid, 50 cents each

J1311—Good Luck Ring

with mystic Chinese characters, said to bring good luck to the wearer. * * *
Price, 25 cents.

J1314—Good Luck Ring

with wishbone, horseshoe, four leaf clover, swastika, and good luck. It is believed by wearing this ring you will have success, wealth, and power. Price, 50 cents.

J1312—Good Luck Ring

with mysterious Egyptian design which it is claimed will bring good luck in games and love to party wearing it day and night. Price 50 cents.

Lucky Omen Ring

with miniature figures of the famous three wise monkeys. It is said the ancients believed the wearer would be lucky in all his undertakings. Price, 35 cents.

PROFESSIONAL IMPORTED GAZING CRYSTALS

These crystals are exactly the same as those used by professional seers and mediums. * * * In nearly every modern home of culture and refinement will be found a gazing crystal.

Special combination outfit, \$5

LOVERS' PERFUME

By Many Called Love Drops

A new creation, an enchanting powerful aroma. Rich and poor; old and young surrender to its charm, \$2.50 size for \$1 postpaid, with instructions for how to woo and how to win.

The Secret of Sex or Controlling the Sex in Generation

Explaining the physical law influencing sex in the embryo, and giving directions how to produce male or female offspring at will.

Either sex desired in the offspring may be obtained without any failure whatever.

Price, postpaid, \$2.

LUCKY NUMBER POLICY PLAYER'S DREAM BOOK, 75 CENTS

With instructions how to strengthen weak eyes.

Get your lucky numbers. Let the magic secret of the lucky number dream book make you a winner. Have wealth and happiness.

HOW TO WIN A HUSBAND

By a Young Widow

The woman who desires to get married, but is unable to do so, will find an immense amount of advice and assistance in this little volume * * * any woman who cannot win a husband by the rules laid down in this book does not deserve one.

Price, postpaid, \$1.50

A HUNDRED WAYS OF KISSING GIRLS, OR HISTORY OF THE KISS

This new book "A Hundred Ways of Kissing Girls", is a novelty and entirely unique in every way.

This book is fully illustrated with 16 handsome half-tone reproductions from photographs taken from life, illustrating different ways of kissing, and posed especially for this book.

Price, postpaid, 50 cents

BE LUCKY

Are you unlucky in money, games, love, or business?

You should carry a pair of genuine, mystic, live, highly magnetic lodestones; rare, amazing, compelling, attractive, these life lodestones are carried by occult oriental people as a powerful lucky charm, one to prevent bad luck, evil, and misfortune, and the other to attract much good luck, love, happiness, and prosperity. Special only \$1 for the two. Satisfaction, or money refunded. You can be lucky. Order yours today.

Notice.—We absolutely guarantee these genuine mystic lodestones are alive. Just what you want, for they are the real thing, powerful, highly magnetic. Get yours now. Price, postpaid for two in a chamois bag, \$1.

Were You Born Under a Lucky Star?

Think it over. You owe it to yourself to know accurately just what the location of the planets at the time of your birth reveal.

If you would succeed, if you would be happy, you must first know and understand yourself.

Ask yourself, can you afford to any longer live in a world of dreadful doubt when for the small sum of 50 cents you may learn the truth and live a life of certainty and success?

The respondent represents that since the hearing referred to, before the special board of investigation, he has definitely discontinued the advertising and the selling in interstate commerce of the said commodities herein mentioned, and does not intend at this time to resume such advertising or sale in the future; and that the sale of

such commodities is limited to the filling of unsolicited orders. Respondent further stipulates and agrees, however, that in the event he decides to resume the advertising again of said commodities, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission.

It is also stipulated and agreed that if the said Theodore Wilson Messick 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. (Aug. 21, 1933.)

0549. Vendor-Advertiser—Brassieres.—Model Brassiere Co., Brooklyn, N.Y., vendor-advertiser, is engaged in selling, among other things, bust-shaping undergarments designated "Cup-Form Brassieres", and in advertising represented:

FOUND—A MAGIC REMEDY

For Sagging, Overdeveloped, and Underdeveloped Busts

Cup-Form, Patented by Model

The Only Brassiere With Patented Bust-Shaping Straps

Now Worn by Over a Million Women

Cup-form's patented bust-shaping straps and inner cups instantly mold a sagging bust into its former youthful firmness. It reduces an overdeveloped bust. It gives alluring curves to the underdeveloped figure. For sale at all department stores, \$1 up, or write Dept. T.G. 1 for illustrated booklet.

MODEL BRASSIERE CO.

Empire State Bldg., New York, N.Y.

In Canada E. & S., Currie, Ltd., Toronto.

This new magical brassiere gives every figure a young bust line.

Support and mold the bust to lines of firm shapeliness!

An immediate remedy for sagging, overdeveloped, or underdeveloped busts. They mold a drooping bust to its former, natural, youthful firmness.

It reduces the size of an overdeveloped bust.

It gives charm and appeal to the underdeveloped figure.

Now, different, unlike any other brassiere in the world.

Relieves the strain on weakened tissues.

All because the patented shaping straps in the cup-form brassiere add the shaping and support which nature gives to youthful, firm tissues.

No wonder, then, that doctors heartily endorse its health-giving features and recommend that women wear cup-form because of its comfortable support.

As nature holds the shape of a rosebud, so cup-form restores feminine beauty to its natural former self.

No women today need pay for expensive beauty treatments to correct drooping or overdeveloped bust or to bring beauty to an underdeveloped figure.

Thanks to this magical new brassiere an unnatural bust can regain its former girl-like appearance immediately.

Cup-form is the only brassiere in the world with patented bust-shaping straps. Combined with soft silken inner cups and an adjustable draw ribbon, this remarkable feature molds a drooping bust to its former natural self, reduces the size of an overdeveloped bust, and rounds weakened tissues into youthful shapeliness. Magical results happen instantly. Sag and strain is relieved by comfort. An underdeveloped figure is given charm and appeal.

Doctors universally recommend this new healthful, stylish support which now can be purchased for \$1 to \$3.50.

If your bust droops and sags, if it is overdeveloped or underdeveloped, here is a magical brassiere which will bring back its former firm and rounded beauty immediately.

Doctors are finding cup-form answers a specific need among all women who are suffering from either major or minor breast disorders.

Many of the medical profession know and prescribe.

A healthful means of uplifting and supporting flabby, pendant breasts.

Cup-form brassiere is constructed so that the breasts are not constrained but fit comfortably into soft, silken cups. Silk elastic, connecting the cups to upper part of the brassiere, holds the busts in their proper, natural position, relieving all sag and strain, and allowing weakened tissues to regain their natural beauty and healthy strength.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions in that said garment, while it may constitute a comfortable mechanical support for large and pendulous breasts and when worn may give the bust an appearance of natural, youthful firmness, does not mold the breast, or reduce its size, or restore its former condition or beauty, or fill a specific need for either major or minor breast disorders, inasmuch as when this appliance is removed the breast returns immediately to its sagging position and the size has not been reduced.

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 respondent's appliance is a magic remedy, an immediate remedy or any other kind of "remedy" for sagging, overdeveloped, or underdeveloped busts;

(b) That said appliance molds a sagging bust into either its former or natural or youthful firmness, either instantly or at all;

(c) That said brassiere is in any way "magical";

(d) That said appliance reduces the size of an overdeveloped bust or restores feminine beauty to its natural, former self;

(e) That it will correct drooping or underdeveloped busts as effectively as expensive beauty treatments may do;

(f) That by the use of such appliance an unnatural bust can regain its former girl-like appearance or an underdeveloped figure is given charm and appeal, except while such appliance is being worn;

(g) That by the use of this appliance weakened tissues are rounded into youthful shapeliness or regain their natural beauty and healthy strength;

(h) That doctors universally recommend this appliance, or that they are finding that it acts as a specific remedy or aid for major and minor breast disorders;

and all representations and statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said Model Brassiere 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. (Aug. 21, 1933.)

0550. **Vendor-Advertiser—Books and Treatises.**—Matthews Dawson, Chevy Chase, Md., vendor-advertiser, is engaged in selling books and treatises on the art of money making, and in advertising represented:

HAVE MONEY

I will tell you how to do it. I have a book called "How to Visualize Money." It brought me \$5,000 in 10 days. It is so simply written a child can understand it. It tells you just how to proceed to bring the money you want and need into realization. Read this book, practice it, and watch the astonishing returns—25 cents.

MATTHEWS DAWSON

Those who apply to me prosper. 6506 Western Avenue, Dept. P, Washington, D.C.

Read my book, "How to Visualize Money." It is simply written and when followed will bring you that money you must have—25 cents.

Money Will Come to You

Thoughts are creative. Every thought we think creates in its own likeness and finally manifests in a material way. Learn how to attract to you the money you want and need. Read my book "How to Visualize Money."

Have the things you want this year. Banish financial worry. Read this inspiring book—25 cents.

If You Need Money

There is a law of attraction for money. Learn it. Use it—and money will come to you in a legitimate way and from totally unexpected sources. I explain the law and tell you how to practice it in my book "How to Visualize Money."

The respondent represents to the Federal Trade Commission that since the hearing referred to, 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 if the advertising of said commodity ever is resumed, it will be made to conform to the rulings or precedents established by the Federal Trade Commission.

It is also stipulated and agreed that if the said Matthews Dawson 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. (Aug. 21, 1933.)

0551. Vendor-Advertiser—Window Washers.—Carter Products Corporation, vendor-advertiser, is engaged in selling Carter's Window Washers, and in advertising represented:

AGENTS—SELLS LIKE WILDFIRE

Make \$380 monthly. Cleans, dries, polishes. No muss. Good Housekeeping approval. Restricted territory. Write today. Carter Products Corporation, also in follow-up literature:

If, with the above margin of profits, you cannot make some money (\$15 a day), then there are no windows in your territory.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said respondent should ever resume or indulge in any practice violative of the provisions of this agreement, this said stipulation as to the fact which may be used in evidence against it in the trial of the complaint which the Commission may issue. (Aug. 21, 1933.)

0552. Vendor-Advertiser—Vigor Tablets.—Doral Laboratories, Inc., New York City, vendor-advertiser, is engaged in selling Doral Vigor Tablets, and in advertising represented:

Men! No need to lose natural powers after 35.

Now easy to regain lost vital powers quickly and inexpensively.

No longer need you suffer from premature loss of natural powers, youthful energy, or normal pep.

Science has at last perfected a glandular aid that brings amazing results to men who feel they have passed their peak at the ridiculously low age of 35.

Don't let the mere fact that you are supposedly beyond the prime of life discourage or depress you.

You may be old in years, but that does not necessarily mean you are old in body.

Hundreds of men, yes, thousands, have found the solution to this vital problem with this new scientific glandular aid * * * Doral Vigor Tabs.

Magic-like in action * * * Quick, positive, long, lasting results.

Doral Vigor Tabs (unlike those so-called "pep pills" that are harmful and habit-forming) have an exceptional stimulating action on dormant glands.

Great benefits quickly derived.

Why suffer from premature loss of pep, vigor, and youthful energy any longer? Why be depressed by this annoying problem when you can so easily regain lost natural powers?

You, too, can help yourself to healthful vigor with this amazing scientific glandular aid.

Doral Vigor Tabs are recommended by physicians as safe, positive, and beneficial, with long lasting results.

This is your opportunity to regain the vigor of real young manhood.

Men who have suffered from nervous disorders, ill health, or mere run-down condition resulting in premature loss of natural powers, may gain great benefits from Doral Vigor Tabs.

Others suffering from results of human system maltreatment of excessive indulgence likewise derive great aid.

Age is unimportant.

Youthful energy has no limits.

Regain lost vitality this easy way.

The Federal Trade Commission claims that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, in that:

Doral Vigor Tabs:

- (a) Will not prevent men losing their natural powers;
- (b) Will not restore lost vital powers;
- (c) Will not aid men to regain lost vital power quickly or at all;
- (d) Are not made after a formula recently perfected or discovered by science;

- (e) Are not made from glandular substances or the excretions of glands, human or animal;
- (f) Are not a scientific glandular aid;
- (g) Are not magiclike in action;
- (h) Are not quick, positive, or lasting in results;
- (i) Will not stimulate dormant glands;
- (j) Will not restore loss of pep, vigor, youthful energy or lost natural powers;
- (k) Are not an amazing scientific glandular aid;
- (l) Are not recommended by physicians as safe, positive, and beneficial for the purposes claimed;
- (m) Will not benefit men suffering from loss of natural powers due to nervous disorders, ill health, run-down condition, excessive indulgence, or any other cause;
- (n) Are composed of three ingredients, one of which, nux vomica, has some tonic properties; another, damiana, has been reputed to have aphrodisiac effects, but there is no reliable scientific evidence to substantiate such a claim; and the other serves only as a source of one element and is without specific effect along the lines of claims made for them.

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:

That said Doral Vigor Tabs:

- (a) Will prevent men losing their natural powers;
 - (b) Will restore lost vital powers, natural powers, youthful energy or normal pep;
 - (c) Are a recent discovery of science;
 - (d) Are made of a glandular substance or secretion;
 - (e) Are a scientific glandular aid;
 - (f) In their action or results are positive, long lasting or permanent; and
 - (g) Are recommended by physicians as a safe, positive, or beneficial treatment for the sex glands;
- and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that said respondent will cease and desist using the term "laboratories" as any part of its corporate or trade name and from representing itself as a laboratory until such time as it may in fact own, operate, or control a laboratory wherein its product or products are prepared and compounded.

It is also stipulated and agreed that if the said Doral Laboratories, 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. (Sept. 18, 1933.)

0553. Vendor-Advertiser—Hair Dye.—Ives-Dianette Laboratories, a corporation advertising under the name of Nada-Mas Laboratories, St. Paul, Minn., vendor-advertiser, is engaged in selling a hair-coloring preparation designated Nada-Mas, and in advertising represented:

I GUARANTEE TO RESTORE THE NATURAL COLOR TO GRAY OR FADED HAIR WITHIN
30 DAYS

[Photo of beautiful Spanish girl]

Without the use of dyes.

Without harm to scalp or hair.

Carlotta Del Rio, who has brought this amazing formula to America * * *. Read her story, of dramatic interest to American men and women everywhere

Five minutes a day in the privacy of your own home is all I ask. Read my offer—the most astounding ever offered men and women afflicted with gray or faded hair.

Let me tell you about my bonded guarantee.

Nada-Mas is based upon an old Spanish formula. Recently I brought it to America.

Nada-Mas is not a dye. It is a scientific health stimulant for the hair. Nada-Mas restores the natural color to gray or faded hair because it stimulates, to normal activity, the dormant color corpuscles of the hair.

Hair turns gray because the color corpuscles become inactive. Nada-Mas stimulates these corpuscles, gives them renewed life, and the hair returns to its natural shade.

Absolutely Harmless

Most hair dyes are actually harmful to the scalp and hair. Many of them are poisonous. Nada-Mas, not being a dye, is beneficial to the hair and scalp.

Bonded Guarantee

No matter how gray you are Nada-Mas will restore your hair to its original color within 30 days. Elsewhere in this advertisement is my bond.

Tear out this bond now. Fill in your name and address. Present it to your dealer when you purchase Nada-Mas. This places your purchase on record, bonds it, * * *

(Signed) CARLOTTA DEL RIO.

Present this bond to your druggist; it guarantees your purchase.

In purchasing Nada-Mas I do so with the distinct understanding that it is guaranteed to restore the natural color to my hair within 30 days if I use it according to directions. If, in my opinion, these results are not obtained,

I may return the bottle and have my full purchase price refunded. I am to be the sole judge in the matter.

Name-----
 Address-----
 State-----
 Countersigned by dealer-----

Who Wouldn't Pay \$1.50 for the Hair of Her Youth!

[Photo of white-haired woman]

Massage a few drops of Nada-Mas into the scalp and hair daily

[Photo of same with black hair]

Thirty days later. The natural color entirely restored

Is your hair turning gray? Wouldn't you gladly pay \$1.50 to restore its natural, youthful color, and brilliance—without the use of dyes, without complicated treatments? You can—easily, harmlessly, in the privacy of your home.

The most astounding guarantee ever offered men and women afflicted with gray or faded hair

THE ROMANTIC STORY OF NADA-MAS

Men and women were reluctant to dabble with these dangerous dyes, and countless thousands journeyed through life with the handicap of prematurely gray or faded hair.

Recently the intelligence arrived in this country from Spain telling of a marvelous scientific discovery which banished forever the problem of gray or faded hair.

This amazing formula is not a dye. It achieves its results by a remarkable new principle—the stimulating to renewed activity the dormant color corpuscles of the hair.

This new formula gives renewed activity to these corpuscles, stimulates them to new life, and thus restores the natural color to the hair.

Now American men and women may restore the natural color to gray or faded hair without the use of dyes, without complicated treatment. Nada-Mas, by restoring the activity to the color corpuscles restores the natural color to gray or faded hair within 30 days, and will keep it that way perpetually.

NADA-MAS LABORATORIES, INC.

2196 University Ave., St. Paul, Minn.

Barcelona

New York

Chicago

GRAY HAIR BANISHED WITHOUT USE OF DYES

Gray hair restored to its natural color within 30 days! Without dyes! In a manner that defies detection! Without harm to scalp or hair!

This is now possible with Nada-Mas, the remarkable new Spanish formula.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate

competitors, having the capacity and tendency to cause erroneous impressions in that said product is itself a progressive dye; contains an ingredient injurious to the hair and scalp; does not stimulate the color corpuscles in the hair or restore either its original or its natural or its youthful shade; is not based upon any Spanish formula; its alleged discoverer, "Carlotta Del Rio", is a myth and nonexistent; the purported pictures "before and after" treatment are merely retouched photographs; and the so-called "bonded guarantee" is neither a bond nor a guarantee; but an adroitly worded declaration signed by the purchaser himself and delivered by him to the retail dealer.

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 respondent's product Nada-Mas will restore the natural color to gray or faded hair, either within 30 days or any other length of time;

(b) That said product is not a dye; is harmless to scalp or hair; is a scientific health stimulant for the hair;

(c) That said product stimulates dormant color corpuscles of the hair to normal activity or gives them renewed life, or causes the hair to return to its natural shade;

(d) That no matter how gray you are Nada-Mas will restore your hair to its original color;

(e) That one by paying \$1.50 may have "the hair of her youth";

(f) That respondent makes "the most astounding guarantee ever offered men and women" afflicted with gray hair;

(g) That the formula for said product is amazing;

(h) That the story of Nada-Mas is "romantic";

(i) That Nada-Mas is a "marvelous scientific discovery", or banishes forever the problem of gray or faded hair, or achieves its results by a remarkable new principle, or will keep the hair in its alleged restored natural color "perpetually";

and all representations and statements equivalent thereto in form or substance.

Respondent further stipulates and agrees:

(j) To discontinue the representation that this product is based upon either an old or a new Spanish formula, or that its formula is derived from or peculiar to any foreign country whatsoever;

(k) To discontinue the allegation that any such mythical character as the fanciful "Madam Carlotta Del Rio" ever in fact existed;

or had a part in the discovery of said hair coloring preparation and its introduction into this country; or is connected with respondent company in any capacity;

(*l*) To cease and desist from representing that either a "bond" or a "guarantee" or a "bonded guarantee" protects the purchaser of Nada-Mas unless and until such be the fact; and from pretending or alleging that any instrument signed only by the purchaser and delivered to the dealer constitutes a bond or a guarantee from the respondent to the purchaser;

(*m*) To cease and desist from publishing doctored or faked photographs purporting to show the effect of its product upon the color and growth of the human hair; and

(*n*) To discontinue the use of the geographical name "Barcelona" on its labels or in its literature, also the names "New York" and "Chicago" until such time as it may actually maintain offices or places of business in those cities.

It is also stipulated and agreed that if the said Ives-Dianette Laboratories 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. (Sept. 18, 1933.)

0554. **Vendor-Advertiser—Flower Beads.**—P. A. Seewagen, trading as Mission Bead Co., Los Angeles, Calif., vendor-advertiser, is engaged in selling beads designated "Mysterious Flower Beads" and in advertising represented:

Mysterious flower beads from California pay up to \$90 a week.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce to cease and desist from publishing and circulating, or causing to be published and 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:

(*a*) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business;

(*b*) That respondent 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 respondent's sales per-

sons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Sept. 18, 1933.)

0555. Vendor-Advertiser—Hair Grower and Skin Whitener.—Thomas Limited, a corporation advertising as the Thomas' and the Thomas Co., Chicago, Ill., vendor-advertiser, is engaged in selling a treatment for the hair and scalp designated Thomas' fast hair grower formula no. 99 and a skin whitener for colored people designated the Thomas' Skin Whitener, and in advertising represented:

ASTOUNDING

New fast hair grower

Bald

[Photo of top of a very bald head]

Regrown

[Photo of top of head with heavy growth of hair]

1229 S. Twenty-first Street, Philadelphia, Pa.

THE THOMAS,

845 Rush Street, Chicago.

DEAR SIR: Your fast hair grower no. 99 is wonderful, and I find it will do all you said it would, and it really started to show results in one week.

My hair stopped falling out and is now growing. I was completely bald. I highly recommend it as the world's finest hair grower.

Your friend,

R. L. HAYES.

WHITEN YOUR SKIN

5 shades in 5 days or treatment is free

* * * When the postman delivers it, just deposit with him 98¢ plus a few cents postage. If you are not delighted, return it and your 98¢ will be immediately paid back.

Now you can lighten your skin seven shades in less than a minute—or this wonderful new Thomas' beautifying treatment costs you nothing.

This amazing discovery blends with the skin itself.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legit-

imate competitors, in that the pictures used in said advertisement to illustrate the results described in such letter are photographs of an office-treatment case, which differs radically from the self-treatment offered by respondent to the mail-order trade as formula 99, and the results thus portrayed were not obtained by any use of such formula 99, although obviously intended to be so understood; and that the Thomas' skin whitener does not whiten the skin any shade, nor does it blend with the skin, being merely a wash applied to the surface, which coating wears off in a short time.

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 Thomas' skin whitener actually whitens the skin; or that it whitens the skin 5 shades in 5 days, or 7 shades in 1 minute, or any shade whatsoever in any length of time;

(b) That said preparation "blends with the skin itself", or that it has any effect upon the skin or serves otherwise than as an applied temporary coating thereon;

(c) That said preparation is an amazing discovery;

(d) That said treatment may be had "free" where the full price thereof, plus postage, must be first paid by the user, on a purchase-price refund guarantee, the user having to pay the postage both ways;

and all representations and statements equivalent thereto in form or substance.

Respondent agrees furthermore to cease and desist from publishing pictures in connection with letters or statements regarding the use of said Thomas' fast hair grower formula 99, which are not actual and bona fide pictures of the identical case described.

It is also stipulated and agreed that if the said Thomas, Limited, 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. (Sept. 19, 1933.)

0556. Vendor-Advertiser—Liquid Cement.—E. J. Zimmer and P. W. Johnson, trading as Bestever Products Co., Chicago, Ill., vendor-advertiser, is engaged in selling an adhesive designated as "metallic liquid", "liquid metal", and "magic wonder", and in advertising represented:

Repairs everything.

The strongest adhesive this world has ever known.

Bestever magic mender is not a glue—not a cement * * *.

Fixes everything.

Can be used to * * * fix kitchenware * * * fasten any kind of material to any other kind.

New metallic liquid repairs everything.

Startling discovery permanently solders.

Here's a new and mysterious liquid.

Mends anything.

Most startling discovery in ages.

A plastic solder.

A liquid metal.

World's best adhesive.

Heatproof.

World's strongest adhesive.

* * * grip like a bulldog to * * * graniteware.

Grips like a vise and holds on forever.

Anything you mend with this new mysterious liquid is permanent; you'll never have to do the job over—it's done for good.

* * * absolutely * * * heatproof.

Agents are literally cleaning up hundreds of dollars.

* * * You'll make a sale every time.

* * * instantly convinces your customer.

The minute you show the housewife this demonstrating board your sale is made.

There is nothing better for mending broken furniture, chinaware, glassware, pottery, pots, pans, and any kind of metal, wood, etc.

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 product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said adhesive will repair, fix, or mend everything.

(b) That said adhesive is the strongest or best adhesive.

(c) That said adhesive is not a glue or is not a cement.

(d) That said adhesive can be used to repair kitchenware or graniteware.

(e) That said adhesive is a startling or new discovery.

(f) That repairs made by the use of said adhesive are permanent or that the adhesive will hold forever.

(g) That said adhesive is a solder or a metal or that soldering can be done with it.

(h) That said adhesive is heatproof.

(i) That agents are earning hundreds of dollars by selling said adhesive.

(j) That a prospective agent will make a sale to every person contacted.

(k) That prospective customers are instantly convinced or that a sale is made immediately upon demonstrating the product.

(l) That there is nothing better for mending broken furniture or any kind of metal or wood.

And all representations and statements equivalent or similar thereto in form or substance. (Sept. 18, 1933.)

0557. **Vendor-Advertiser—Embroidering Patterns and Materials.**—P. F. Marquette, trading as Needle Arts, Chicago, Ill., vendor-advertiser, is engaged in selling designs, patterns, and materials for the home embroidering of guest towels, and a list of women's exchanges that sell such articles, and in advertising represented:

FEMALE HELP WANTED

Make \$40 doz. embroidering guest towel sets. Send 50¢ money order for patterns and plans.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said respondent 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. (Sept. 28, 1933.)

0558. **Vendor-Advertiser—Syrup of Pepsin.**—The Pepsin Syrup Co., Monticello, Ill., vendor-advertiser, is engaged in selling Dr. Caldwell's Syrup of Pepsin, and in advertising represented:

STRONGER THAN HE WAS AT TWENTY

[Photograph of man]

Fifty-five years old, and still going strong.

Do you want the secret of such vitality? It isn't what you eat, or any tonic you take. It's something anyone can do—something you can start today and see results in a week. All you do is give your vital organs the right stimulant.

A famous doctor discovered the way to stimulate a sluggish system to new energy. It brings fresh vigor to every organ. Being a physician's prescription, it's quite harmless. Tell your druggist you want a bottle of Dr. Caldwell's sirup pepsin. Get the benefit of its fresh, laxative herbs, active senna, and that pure pepsin. Get that lazy liver to work, those stagnant bowels into action. Get rid of waste matter that is slow poison so long as it is permitted to remain in the system.

The new energy men and women feel before one bottle of Dr. Caldwell's sirup pepsin has been used up is proof of how much the system needs this help.

Get a bottle of this delicious sirup and let it end that constant worry about the condition of the bowels. Spare the children those bilious days that make them miserable. Save your household from the use of cathartics which lead to chronic constipation. And guard against auto-intoxication as you grow older.

Dr. Caldwell's sirup pepsin is such a well-known preparation you can get it wherever drugs are sold and it isn't expensive.

How Old?

He doesn't look a day over 50. And feels like 40. At the age of 62.

That's the happy state of health and pep a man enjoys when he gives his vital organs a little stimulant.

When your system is stagnant and you feel sluggish, headachy, half alive, don't waste money on tonics or regulators or similar patent medicines. Stimulate the liver and bowels. Use a famous physician's prescription every drug store keeps. Just ask them for Dr. Caldwell's sirup pepsin.

One dose will clear up almost any case of headache, biliousness, or constipation.

Have a sound stomach, active liver, and strong bowel muscles that expel every bit of waste and poison every day. Just keep a bottle of Dr. Caldwell's sirup pepsin on hand; take a stimulating spoonful every now and then.

Mother of Seven—Still Young

The woman who gives her organs the right stimulant need not worry about growing old.

Her system doesn't stagnate; her face doesn't age. She has the health and "pep" that come from a lively liver and strong active bowels. * * *

Just ask for Dr. Caldwell's sirup pepsin. Take a little every day or so until every organ in your body feels the big improvement.

Would you like to break yourself of the cathartic habit, at the same time building health and vigor that protects you from frequent sick spells, headaches, and colds? Get a bottle of Dr. Caldwell's sirup pepsin today. Use it often enough to avoid those attacks of constipation.

Fifty and Fit

There's a simple little thing anyone can do to keep the vital organs stimulated and feel fit all the time. People don't realize how sluggish they've grown until they've tried it. The stimulant that will stir your system to new life is Dr. Caldwell's sirup pepsin. It will make a most amazing difference in many ways.

That's all you need to drive away the dullness and headache of a bilious spell and rid the system of that slow poison that saps your strength. It's better than a tonic for tired bowels.

Diet Didn't Do This

Every child's stomach, liver, and bowels need stimulating at times, but give children something you know all about.

Follow the advice of that famous family physician who gave the world sirup pepsin. Stimulate the vital organs.

A World's Record

If you have a baby, you have constant need of this wonderful preparation of pure pepsin, active senna, and fresh herbs. A child who gets this gentle stimulant for the stomach, liver, and bowels is healthier and happier.

Where Does She Get Her Pep?

She doesn't look 70. Nor feel that old. The woman who stimulates her organs can have energy that women half her age will envy.

At middle age your vital organs begin to slow down. You may not be sick, just sluggish. But why endure this condition of half health when there's a stimulant that will stir a stagnant system to new life and energy in a week's time?

Men, women, and children who are run down, who tire easily, get bilious spells, or have frequent headaches are soon straightened out when they get this prescriptive preparation of pure pepsin, active senna, and fresh laxative herbs.

They've Never Tasted a Tonic

You can have children like this, and be as healthy yourself, if you follow the advice of a famous family physician. Stimulate the vital organs. The strongest of them need help at times. If they don't get it, they grow sluggish. Dr. Caldwell's sirup pepsin is a mild, safe stimulant.

When a youngster doesn't do well at school, it may be the liver that's lazy.

CHICAGO WOMAN DREADED CHILDBIRTH

Told She Might Die, Woman Almost Crazy With Fear

He originated a wonderful medicine, based on years of experience. Expectant mothers who do not dare use strong, habit-forming cathartics can take Dr. Caldwell's sirup pepsin at any time. It drives the body poisons out of the system, permitting sound sleep and healthful digestion.

"My liver became active and bowel muscles stronger. Even my complexion began to clear up. Everyone noticed it. It was just like a miracle."

Every man's liver, stomach, and vital organs grow tired now and then and need to be stimulated back to proper action. Aiding nature—that's the trick. The stimulant that always stirred my system to new life when I got to feeling low down was sirup pepsin. It always did the work thoroughly and helped me keep in shape the year around.

I have always believed in stimulating the vital organs of my children regularly. I find that Dr. Caldwell's sirup pepsin is a safe stimulant which is thorough in action and does the work.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous

impressions in that the limit of the therapeutic value of said preparation, according to medical reports made, appears to be the relieving of constipation and headaches or biliousness when due to constipation. Respondent states that at the time of making such statements it believed them to be correct, and neither exaggerated nor misleading, and that said statements were made in good faith.

The respondent represents to the Federal Trade Commission that it has definitely discontinued the advertising statements objected to, and does not intend at this time to resume such advertising statements in the future; and respondent stipulates and agrees that if and when advertising is again resumed, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in all cases limit the representations to the known therapeutic value and physiological effects of the ingredients used in compounding the preparation.

It is also stipulated and agreed that if the said the Pepsin Syrup 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. (Oct. 2, 1933.)

0559. **Vendor-Advertiser—Hair Remover.**—George A. Edam, trading as Edam Manufacturing Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling an instrument for removing hair from the face and body designated the "Sabo painless hair remover", and in advertising represented:

THE SABO PAINLESS HAIR REMOVER

[Photo]

An instrument that removes superfluous hair permanently and painlessly. No drugs. No chemicals. Not a needle. Entirely automatic. \$3 brings it parcel post with money-back guarantee. Descriptive literature free.

THE EDAM MANUFACTURING CO., 3124 SCRANTON ROAD, CLEVELAND, OHIO

Respondent stipulates and agrees in soliciting the sale of and selling said Sabo painless hair remover 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 otherwise designating same as permanent in its effect in the removing of hair.

It is also stipulated and agreed that if the said George A. Edam 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. (Oct. 2, 1933.)

0560. **Vendor-Advertiser—Tooth Paste.**—Kolynos Co., New Haven, Conn., vendor-advertiser, is engaged in selling tooth paste, and in advertising represented:

Teeth whiten 3 shades in 3 days when you remove bacterial mouth.

Germs sweep into the mouth with every breath and attack tooth and gum. They cause the condition known as bacterial mouth, but Kolynos quickly conquers this foe. * * *

* * * Washes away tartar. * * *

Within 3 days, teeth will look whiter, fully 3 shades.

Erases stain and tartar.

It cleans and polishes teeth down to the naked white enamel without injury.

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 tooth paste will whiten teeth 3 shades in 3 days;

(b) That germs that sweep into the mouth attack teeth and gums or cause bacterial mouth;

(c) That said tooth paste will remove or conquer bacterial mouth;

(d) That said tooth paste will erase, wash away, or remove tartar from the teeth;

and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees that in connection with any representation that said tooth paste will clean and polish teeth, it will cease and desist from using the expression "down to the naked white enamel", in form or substance, unless such expression "down to the naked white enamel" is qualified by indicating that said tooth paste will not remove tartar and other deposits requiring instrumentation.

It is also stipulated and agreed that if the said Kolynos 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. (Oct. 2, 1933.)

0561. **Vendor-Advertiser—Cigar and Cigarette Lighter.**—Wright G. Scroxtton, trading as New Method Manufacturing Co., Bradford,

Pa., vendor-advertiser, is engaged in selling a cigar and cigarette lighter designated "The everlasting match", and in advertising represented:

THE EVERLASTING MATCH

No wind can blow it out. Make up to \$25 a day. Sells on sight. An everlasting match—a mystery cigar lighter. A scientific marvel. New ignition principle—no flint or friction. Sample and moneymaking sales plan.

NEW METHOD MANUFACTURING CO.

Desk Y-9, New Method Building, Bradford, Pa.

THE EVERLASTING MATCH

Can Bring You \$5 a Day or More

New scientific marvel that amazes everyone. No flint, no friction, a brand-new ignition principle. Every demonstration a sale.

Something Different—the Everlasting Match. Make Up to \$40 a Day Showing This Scientific Marvel to Men

An income up to \$5,000 a year is possible from the very beginning.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, salespersons or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

(a) That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business;

(c) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business; and

(d) That in future advertising where a modifying 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 representations of earnings.

It is also stipulated and agreed that if the said respondent 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. (Oct. 2, 1933.)

0562. **Vendor-Advertiser—Stomach and Intestinal Treatment.**—Charles A. Stein and Arthur W. Arnold, trading as Homeo. Products Co., Clinton, N.Y., vendor-advertiser, is engaged in selling a medicinal preparation for the treatment of certain stomach and intestinal disorders, and in advertising represented:

Indigestion (stomach and intestinal) relieved immediately.

There is nothing like this remedy for acidity, gas, and other digestive troubles.

* * * restores entire digestive tract to normal condition.

Prescription of eminent stomach specialist.

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 medicinal preparation will immediately relieve stomach indigestion or intestinal indigestion; or

(b) That said medicinal preparation is a competent treatment for digestive troubles other than acidity or gas; or

(c) That said medicinal preparation will restore the digestive tract to normal conditions; or

(d) That said medicinal preparation is compounded according to a prescription of a stomach specialist;

and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Charles A. Stein and Arthur W. Arnold 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 them in the trial of the complaint which the Commission may issue. (Oct. 2, 1933.)

0563. **Vendor-Advertiser—Greeting and Christmas Cards.**—Personality Paper Co., Philadelphia, Pa., vendor-advertiser, is engaged in selling greeting cards, and in advertising represented:

SELL CHRISTMAS CARDS

Selling Offer Greatest of All Time

MEN! WOMEN!

Earn up to \$100 a week. * * * Full or spare time, men and women, earn up to \$3 an hour.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

(a) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Oct. 9, 1933.)

0564. Vendor-Advertiser—Facial Creams.—M. H. Morton, trading as Morton Laboratories, Brooklyn, N.Y., vendor-advertiser, is engaged in selling facial creams, and in advertising represented:

PIMPLES

are embarrassing, repulsive. They hurt you in business and social life. Why suffer with these hideous skin disfigurements, when they can be removed, easily and quickly. Simply apply medicated Mortona face cream and leave on overnight. After a few treatments pimples, blackheads, freckles, and other facial blemishes will disappear, leaving your skin clear, smooth, and flawless. Mail \$1 (c.o.d. \$1 plus postage) for a complete treatment jar. Absolutely guaranteed or your money refunded.

The Federal Trade Commission, from an investigation made, has reason to believe that the aforesaid statements are exaggerated and misleading to the injury of the public and of competitors in that the formula submitted indicates that this preparation, while it would probably have slight astringent qualities, effective to some degree in reducing the size of enlarged pores, and would have a tendency to bleach the skin temporarily of freckles and tan spots, would nevertheless be of little value in the treatment of pimples and black-heads, which are conditions that require other treatment than the mere application of an ointment of this kind.

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.

It is also stipulated and agreed that if the said M. H. Morton 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. (Nov. 9, 1933.)

0565. **Vendor-Advertiser—Feminine Hygiene Preparation.**—R. B. Eisenberg, trading as National Hygiene Institute, Chicago, Ill., vendor-advertiser, is engaged in selling a feminine hygiene product designated as "Nyex suppositories", and in advertising represented:

Nyex suppositories assure complete marriage hygiene. Safe, protecting, tested, used by doctors. Made by famous laboratory. Kills germs. Harmless to delicate membrane.

Thoroughly reliable antiseptic—provides complete feminine hygiene protection. Nyex forms a film over internal membranes, destroys germs instantly.

Complete, dependable, safe marriage hygiene assured through Nyex suppositories.

With unusual antiseptic qualities they are certain death to germ life.

It contains antiseptics that give perfect immunity from infection by germ life for several hours.

The fear and worry that spoil so many hours of life may be banished forever.

* * * one suppository is adequate for several hours of immunity.

* * * brings freedom from the inconvenience and uncertainty of accessories * * *.

Nyex suppositories may also be used effectively for the treatment of vaginitis, cervicitis, leucorrhoea * * *.

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 in that some of said state-

ments import and imply that said product is an effective contraceptive, whereas the formula submitted discloses that said product cannot be depended upon to prevent conception. Said statements are further considered by the Commission to be misleading in that investigation disclosed that said product is not a competent germicide, nor a competent treatment for vaginitis, cervicitis, or leucorrhoea.

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) By inference or direct statement that said product is a contraceptive; or

(b) That said product is a germicide or that it will kill germs; or

(c) That said product affords hygiene protection; or

(d) That dependable marriage hygiene is assured by the use of said product; or

(e) That said product will give immunity from infection by germ life; or

(f) That the use of said product will banish worry; or

(g) That the use of said product will bring freedom from the inconvenience or uncertainty of accessories; or

(h) That said preparation is a competent treatment for vaginitis, cervicitis, or leucorrhoea;

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 product in interstate commerce, to cease and desist from using the word "institute" as a part of his trade name.

It is also stipulated and agreed that if the said R. B. Eisenberg 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. (Nov. 9, 1933.)

0566. Vendor-Advertiser—Treatments for Female Troubles.—Fredrick Housman, trading as the Hygiene Kalology Co., New York City, vendor-advertiser, is engaged in selling medical preparations and mechanical devices for dealing with so-called "suppressed menstruation and kindred conditions", and in advertising represented:

Feminine hygiene. Free booklet describing wonderful articles for private use of married ladies. Sent sealed. Hygiene & Kalology Co., 104 West 13th Street, New York City, department A.

and in circulars and follow-up literature:

HELP FOR WOMEN

DR. RICHAUE'S PARISIENNE PERIODIC PILLS

In handing you this circular, we are actuated by a desire to guard your health, enhance your happiness, and to introduce Dr. Richaue's Parisienne periodic pills in your vicinity * * *

Our experience and investigation, covering a period of nearly half a century have specially fitted us for the work in hand—emancipating women from thralldom which makes existence but a living death.

A Product of Science

In short he must not only know how to do, but his heart must be in his work to enable him to do it. And such a man was the discoverer of Dr. Richaue's Parisienne periodic pills, who possessed in a high degree the knowledge requisite to make an eminently successful physician in the treatment of the diseases which are peculiar to the delicate organization of the uterine system. He was a profound thinker, and one of the most widely known and eminent physicians of modern times, and in his extensive private practice in Paris, covering a period of more than 30 years, he demonstrated the remarkable properties of this remedy in overcoming the peculiar diseases for which it is intended and so highly recommended.

In more than 100,000 well-authenticated cases in which it has been used, not one failure to obtain the desired result has ever been reported.

A Friend in Need

Therefore, do not be deceived by worthless medicines, for Dr. Richaue's Parisienne periodic pills will with unerring certainty prove a positive specific.

To the troubled mind they promptly bring relief by removing the physical causes which produce such abnormal conditions.

Powerful, But Harmless

For suppressed menstruation Dr. Richaue's Parisienne periodic pills have no peer in the annals of medicine.

They are most powerful in assisting nature to perform her functions and will force the periodic flow when no other known preparation will reach the case. While powerful in their properties and positive in action in bringing about the monthly flow, they are mild and gentle in operation, and do not disturb the whole organization of nature as do many so-called "emmenagogues." While using Dr. Richaue's Parisienne periodic pills you can go about your usual household duties without experiencing any unpleasant effects. This, we believe, can be truthfully said of no other remedy used for a similar purpose. Furthermore, they tone up the general system and bring sunshine to a clouded mind and happiness to a heavy heart. They perform with unerring certainty what is expected of them under all conditions and in every case. Therefore, we wish to say with all the force possible—Take hope, burdened women. There is relief for you all, no matter what the cause of the trouble. Pin your faith to Dr. Richaue's Parisienne periodic pills, and you will bless the day that kind fate put this little work into your hands; for as sure as light follows darkness so sure are you of getting the desired relief.

* * * their praise is sung from ocean to ocean by thousands of happy married women who have been relieved by the timely use of this wonderful remedy.

* * * you should trust yourself to that sterling remedy, Dr. Richaue's Parisienne periodic pills, which work with the same unvarying success in all cases and under all conditions of suppression.

Doubt Dissipated

You are sick in body and troubled in mind. You want relief, and that without delay. Dr. Richaue's Parisienne periodic pills are within your reach, and if you suffer it is because you have never tried this invaluable remedy.

They are antagonistic to an obstruction of the menstrual flow, no matter from what cause arising, and suppression cannot exist where these pills are used. As immutable as are the laws of nature, so invariable is the action of this remedy under all abnormal conditions. There is nothing left of doubt or uncertainty when Dr. Richaue's Parisienne periodic pills are used.

We are sole agents in America for Dr. Richaue's Parisienne periodic pills; therefore, do not be deceived by imitations, and do not accept substitutes.

Ladies who prefer treatment for suppression and kindred troubles without the use of medicine are invited to try out dilatere pessary, which is the most perfect device known to medical science for the prevention and cure of female complaints. It is the most positive monthly regulator ever invented. All correspondence sacredly confidential.

Testimonials

I have followed your instructions conscientiously for the last 3 days, and am happy to say that my trouble has at last succumbed to the treatment. Hereafter, your periodic pills will be priceless to me.

Oh, how happy I am to report to you that your pills did the work as you promise they would! I cannot thank you enough for the relief you have brought to my mind. Were the price \$20 per box, instead of \$2.50, I should possess them.

I feel that I owe you a debt which can never be repaid. You have been my salvation. Circumstances surrounded my case of which I cannot write. Two months of suffering, both body and mind, have been relieved by your pills, and I thank you for it.

The first box I used proved so satisfactory in removing my trouble after I had gone nearly 3 months over my time and I was in great distress, so I want to have them by me always for an emergency. Several of my friends have tried them on my recommendation, and every one is pleased with them and praise them to the skies.

I had gone 2 months over my time when I got a box in March, and after using them 4 days my trouble left me. They are the best I have ever used, and I shall never be without them.

Both my sister and myself have been using them for 6 months, when needed, and they have never disappointed us yet.

The Niagara Whirlpool Spray Syringe is the latest and most perfect vaginal syringe ever invented. It is highly endorsed by the most eminent physicians and surgeons of Europe and America, on account of its invaluable services to all married ladies. As a positive vaginal cleanser, it has no equal. It is constructed upon the principle of injection and suction, and by its peculiar action dilates and unfolds the membranous tissues of the vagina throughout its

entire length, thus making a smooth surface to the neck of the womb, which enables the user to quickly remove all foreign substances from these parts by the simplest process known.

DR. RICHAUE'S PREVENTIVE TABLETS

As a vaginal douche and uterine astringent these tablets have no equal. While speedy and powerful as a germicide, and superior to all of the old-time poisonous bactericides, they are nontoxic and perfectly harmless, yet absolutely destructive to all forms of germs or bacteria with which they come in contact.

Dr. Richaue's preventive tablets could not injure the most delicate person, though one was swallowed by mistake. * * *

Dr. Richaue's preventive tablets are compounded with the view of not only preventing, but curing disease. They are called preventive tablets, because they primarily prevent troubles which ultimately lead to an unfortunate ending. The vaginal canal with its numerous membranous folds is a receptacle well adapted to the formation and development of bacteria or other micrococci. When these germs effect an entrance to the vaginal passage, they cause that organ to become diseased. Leucorrhœa (whites) is the most common trouble, and if not cured will lead to uterine and ovarian diseases which often become incurable. For leucorrhœa already developed, douches should be taken night and morning to effect a cure. Dr. Richaue's preventive tablets will absolutely prevent contagion, if used immediately after being exposed. Better be safe than sorry. While harmless to the parts and a cure for disease, they also destroy all germs and keep the vaginal canal in a healthy condition. Price \$2.50 per box of 100, with complete directions for safeguarding and curing disease.

IMPOTENCY OR LOST-VIGOR TABLETS

Dr. Richaue's favorite prescription is the most perfect formula known to medical science. As an aphrodisiac its action positively corrects that lowered vitality of the system as seen in debility, neurasthenia, and sexual exhaustion. It is equally efficacious for both male and female, in functional impotence and in depressed conditions of the nervous system, exerting a pronounced effect upon nutrition, increasing nerve force and energy, and stimulating and restoring sexual power.

These tablets are nonpoisonous, and while powerful in action are in no way harmful to health.

VAGINAL SUPPOSITORY

Their efficacy, when administering drugs locally, has proved them to be the most prompt, speedy, and positive method known to medical science for the treatment of certain diseases.

Numerous reports from various clinics throughout the world would seem to justify us in the belief that there is no remedy equal to these suppositories in the treatment of vaginitis, vaginal catarrh, uterine ulcerations, inflammation, and leucorrhœa, commonly called by women "the whites." This disease is a menace to health, and if not cured before becoming chronic, may result in uterine and ovarian disorders which often become incurable.

SANITARY SPONGE—FOR LADIES' USE

These are extensively used by married ladies at the catamenia periods and for various purposes, and never fail to give perfect satisfaction.

THE "DILATARE" PESSARY

Woman's Friend

Suppressed menstruation is the bane of woman's existence. From the moment that she passes her regular period without this function making its appearance, she is not in good health, and is, consequently, most miserable. Questions of all kinds arise in her mind as to her real condition, and these she is powerless to answer. This ever-present doubt and uncertainty destroys her peace of mind and makes her the most unhappy of mortals * * * While in this condition she would make any sacrifice, give anything to obtain relief, if this could be effected in a strictly private manner. She answers some of the numerous advertisements found in all publications such as "Relief for ladies", "Pennyroyal pills", "Tansy pills", "Dr. Blank's speedy, safe, sure pills", etc., etc.,

But a trial of these so-called emmenagogues prove them to be nauseating and worthless and she learns to her sorrow that she has received no benefit from their use, and that her condition is even worse than before. There are many compounds formulated for the purpose of acting upon the uterine system. Some of them may be good, others palliative, but the majority are worthless, and many positively dangerous. Nothing, however, will so surely bring about immediate relief for suppressed menstruation as this simple yet positive device for assisting nature in her own way to open the floodgates for a free exit of the menstrual flow.

For suppressed menstruation the Dilatare pessary has never been known to fail, no matter what the cause of the trouble, or of how long standing. When economy is considered, it is the cheapest besides the most certain method of treating this affection, for the Dilatare can be used as often as required, and with care will last a lifetime.

Irregularities superinduced by stricture and spasmodic or congenital contraction, resulting in sluggish organs, suppressed, painful, or scant menstruation, are speedily overcome without the use of medicine. For leucorrhœa, inflammation, catarrh, ulceration, and kindred troubles we furnish a medicament especially prepared for such cases from the best-known formulas, to be used in conjunction with the Dilatare.

Leucorrhœa

This unnatural drain upon the system is cured by placing our specially prepared medicament in the base of the Dilatare and adjusting as in the case of suppression. The warmth of the parts gradually melting the salve, which flows down and through the entire length of the vagina thus effecting a permanent cure.

Barrenness

It is a fact now completely established that all women are more susceptible to impregnation immediately before and particularly after the monthly sickness; therefore, this period is the most favorable to conception. The reason of this is obvious, for at this period the mouth and neck of the womb are slightly dilated just before or after menstruation, and if the womb is active, as it is in the case of a prolific woman, it sucks up the spermatozoa of the male if deposited near it, and fecundation takes place. This power of suction differs to a considerable extent in women, and can be accounted for only on the theory that perfect and natural dilation of the neck of the womb at this time is more favor-

able to conception. If nature does not sufficiently expand this organ of generation during intercourse its suctorial power is so feeble or slight that fecundation is impossible. A barren woman generally has a sluggish womb, or one that is not sufficiently dilated by nature to take up the fluids deposited by the male; hence her continued failure to conceive. To any healthy, active married woman, between the ages of 20 and 40, who has never been able to bear children we make this offer: If she will purchase one of our silver or gold Dilatare pessaries and follow our directions, we guarantee conception in less than 60 days or money refunded. These directions are simple and can be easily complied with, but in order that all may know what is necessary in this respect, before purchasing, we give these simple rules for the use of this device, so that everyone may see how easy its use really is.

Attach a silk thread to the Dilatare and adjust it as shown in the illustration 5 days before the expected menstrual period or 5 days thereafter; allowing it to remain in position 48 hours, which will cause no inconvenience whatever. At the expiration of this time the neck of the womb will be sufficiently dilated to facilitate easy access of the germ, and the opportune time has arrived for the act of procreation. At the instant this function terminates, as the passage to the womb is completely closed, it will be necessary to at once remove the Dilatare from the position it occupies by gentle traction upon the thread, thus opening a free channel for the entrance of the spermatozoa, but extreme care should be exercised that it is not drawn down too far through the vagina, as it may carry with it portions of the male fluid, which must remain close enough to the orifice of the womb to enable that organ, through its power of suction or absorption to draw within its walls the germs of fecundation. Repose of the wife, and above all, sojourn on the bed and placing a pillow so as to slightly raise the body after the act of generation also facilitates conception.

Complete directions accompany each Dilatare, showing the simplicity of adjusting it, each one being so perfectly constructed that any female can place it in position or remove it in a few moments without the slightest difficulty. No alarm need be felt of its going too far or becoming detached under any conditions. It offers no obstruction whatever to intercourse, nor can its presence be detected on such occasions. It cannot cause the slightest pain or injury to the most delicate female. In a word, it is perfection, being the most wonderful device known to medical science. If desired, it can be adjusted and kept constantly in place between the menstrual periods without causing the slightest injury or inconvenience. One lady who is using it writes: "It is priceless to me, and money will not tempt me to part with mine unless I could get another." Every intelligent female should be able to understand the benefits to be derived from its use. We have endeavored to explain and illustrate the Dilatare so plainly that prospective patrons cannot fail to comprehend its uses, construction, and advantages before purchasing.

Read what ladies say who have used it.

The Dilatare has proved effectual in my case. It is very easy to adjust. I can place it in position in about half a minute. It does not interfere in the least, and it can be my own secret if I wish. It is very easy to wear. I would not know of its presence unless I remembered that it had been placed in position.

I think the Dilatare is fine. It is easily adjusted and offers not the least impediment to nature's acts or requirements. I bought it as a guard against suppressed menstruation, and it has proved effectual in my case.

Had I known of it before, it would have saved me much suffering and worry. I find it easy to adjust and comfortable to wear. Its presence is never noticeable in the least.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of competitors, in that the intent here appears to be to inveigle the reader into the belief that such medications and trappings will cure disease, induce abortion, and prevent pregnancy and disease; whereas the medical advice received by the Commission is that no such item listed, nor any combination of them, will fulfill the promises made; that the so-called "Dr. Richaue's Parisienne periodic pills" are in fact Eli Lilly's pills, and neither Parisian nor periodic, the famous Dr. Richaue being mythical; that such a prescription has no rational therapy, because when taken according to directions it would produce pelvic congestion, griping, intestinal purging, uterine cramp, and musculature spasm and contraction; that the so-called "Dr. Richaue's preventive tablets" act merely as an astringent douche and have none of the preventive and curative qualities claimed for them; that said impotency or vigor tablets have none of the remedial values ascribed to them; that said vaginal suppositories are not effective treatments for any of the conditions named, or of any benefit beyond the soothing of vaginal irritations; that the sanitary sponge is not used extensively by ladies at the catamenia periods as represented; and that said Dilatare pessary is of no practical therapeutic value in the hands of a lay female, is not efficacious in the treatment either of suppressed menstruation or of barrenness, could not be inserted by the average woman in such a way as to prevent conception or cause abortion, and that such appliances are not safe and simple as claimed, but have not infrequently proven harmful and even fatal.

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:

(a) That said Dr. Richaue's pills are either "Parisienne" or "periodic";

(b) That respondent is "specifically fitted" for the work in hand by reason of "half a century of experience and investigation" or by any other reason;

(c) That said pills are "a product of science";

(d) That the alleged Dr. Richaue—

1. Possessed "knowledge in a high degree" regarding treatment of diseases peculiar to the uterine system; or

2. Was a "profound thinker"; or

3. Was "one of the most widely known and eminent physicians of modern times"; or

4. "Had an extensive private practice in Paris"; or

5. By this "remedy" overcame the "peculiar" diseases for which it is intended;

(e) That there has not been one failure to obtain "the desired result" in "more than 10,000 well-authenticated cases";

(f) That said pills

1. Are "a friend in need"; or

2. Will with "unerring certainty"—or at all—prove a "positive specific", either for "the desired result" or for any other purpose whatsoever; or

3. Promptly bring relief to a "troubled mind" by removing the physical causes which produce such conditions; or

4. Are either powerful or harmless or without a peer in the annals of medicine; or

5. Will "force the periodic flow when no other preparation will reach the case"; or

6. Operate in a manner different from other emmenagogues and without any unpleasant effects or that this is true of no other remedy; or

7. Tone up the general system; or

8. Bring sunshine to "a clouded mind" or happiness to "a heavy heart"; or

9. Perform "with unerring certainty" "what is expected of them" "under all conditions" and "in every case"; or

10. Bring relief for all "burdened women", no matter what the cause of the trouble"; or

11. Will get you "the desired relief" "as sure as light follows darkness"; or

12. Work with the "same unvarying success" in all cases and under "all conditions" of suppression; or

13. Dissipate "doubt"; or

14. Are so antagonistic to an obstruction of the menstrual flow, "no matter from what cause arising", that suppression "cannot exist" where these pills are used; or

15. Are "as invariable" in their action under "all" abnormal conditions as the "immutable laws of nature";

(g) That "thousands" of happy "married women" have been relieved by the "timely use" of this "wonderful remedy";

(h) That respondent's company "are sole agents in America" for these pills, or, in fact, agents for anybody; or that said pills are being "imitated";

(i) By implication or otherwise, that these pills may be used successfully to prevent conception or cause abortion;

(j) That the Niagara Whirlpool Spray Syringe is endorsed by the most eminent physicians and surgeons of Europe and America; or that it is the most perfect vaginal syringe ever invented; or that its action dilates and unfolds the membranous tissues of the vagina by the simplest process known;

(k) That said Dr. Richaue's preventive tablets are either—

1. Germicidal; or
2. Preventive; or
3. Curative; or
4. Superior to all old-time bactericides; or
5. Perfectly harmless; or
6. Absolutely destructive to all forms of germs or bacteria; or
7. Noninjurious if swallowed by mistake; or
8. A cure for leucorrhoea or any other disease whatsoever; or
9. An absolute preventative of "contagion" after exposure;

(l) That it is "better to be safe than sorry", by the use of these "preventive" tablets;

(m) That said impotency or lost vigor tablets—

1. Are an effective treatment for impotency; or
2. Will restore lost vigor; or
3. Are aphrodisiacal in action; or
4. Positively correct either debility or neurasthenia or sexual exhaustion; or
5. Are equally efficacious for both sexes; or
6. Constitute a competent treatment for functional impotence or depressed conditions of the nervous system; or
7. Stimulate or restore sexual power; or
8. Are both powerful in action and harmless to health;

(n) That respondent's vaginal suppositories—

1. Are the most prompt or speedy or positive method known to medical science for the treatment of "certain" diseases or any diseases; or
2. Are commended in "numerous reports from various clinics throughout the world", or from any clinics whatsoever; or
3. Are effective treatment for vaginitis or vaginal catarrh or uterine ulcerations or uterine inflammation or leucorrhoea; or
4. Are of any benefit or merit beyond the soothing of vaginal irritations;

(o) That leucorrhoea, if not cured before becoming chronic, may result in incurable uterine and ovarian disorders;

(p) That respondent's sanitary sponge is "extensively used by ladies at the catamenia periods";

(q) That the dilatere pessary—

1. Is the most perfect device known to medical science for either the prevention or the cure of female complaints; or

2. Is the most positive monthly regulator ever invented; or
 3. Is the surest device known for "opening the flood gates for a free exit of the menstrual flow", thus relieving the subject's distress of mind "as to her real condition"; or
 4. Has never been known to fail, "no matter what the cause of the trouble, or of how long standing"; or
 5. Will "speedily overcome" such irregularities as stricture or spasmodic or congenital contraction, or sluggish organs, or suppressed or painful or scant menstruation, or leucorrhoea, or inflammation or catarrh or ulcerations or other kindred troubles of the vagina or the uterus; or
 6. Is a "cure" for leucorrhoea or any other condition; or
 7. Will enable a barren woman to conceive in 60 days' time, or in any other length of time, either by means of the formula described or in any other manner; or
 8. May be left in position "constantly", without inconvenience or injury to the most delicate female, or without its presence being known unless remembered that it had been placed in position; or
 9. May be inserted or adjusted by the average woman to operate successfully as either a contraceptive or an abortifacient; or
 10. Is either safe or simple;
- and all representations and statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said Frederick Housman 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. (Nov. 9, 1933.)

0567. Vendor-Advertiser—Washing Machines.—Preston Manufacturing Co., St. Louis, Mo., vendor-advertiser, is engaged in selling washing machines, and in advertising represented:

Lowest priced washing machine in the world.

* * * a very special proposition * * * one that will yield you from \$70 to \$150 per week. * * *

You can easily make \$500 a month and more.

And you can make \$5 to \$30 a day.

Free trial offer.

when in truth and in fact said statements are 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 said washing machines are the lowest priced washing machines in the world;

(b) That any of said washing machines is offered on free trial unless such washing machine is sent to the prospective purchaser without requiring that any money be paid, that any deposit be made, or that any service be rendered;

(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 representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Preston Manufacturing 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. (Nov. 9, 1933.)

0568. Vendor-Advertiser—Feminine Hygiene Product.—Emanuel Rosenbloom, trading as Peerless Pharmacal Co., Syracuse, N.Y., vendor-advertiser, is engaged in selling a feminine hygiene product designated as "Peerless periodic tablets", and in advertising represented:

Use periodic tablets for unnaturally painful or delayed periods. Obtain sure, quick relief. Remarkably effective in stubborn cases.

Ladies—end worry and suffering. Use peerless periodic tablets for immaturely painful or delayed periods. Obtain sure, quick relief even in most stubborn and discouraging cases.

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 product will relieve cases of delayed menstruation; or

(b) That said product is an effective contraceptive or abortifacient;

(c) That said product is effective in stubborn or discouraging cases;

(d) That users of said product will obtain sure relief; and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees in soliciting sale of and selling said feminine hygiene product in interstate commerce, to cease and desist from using the word "Pharmacial" as a part of his trade name.

It is also stipulated and agreed that if the said Emanuel Rosenbloom 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. (Nov. 9, 1933.)

0569. Vendor-Advertiser—Magazine.—H. & S. Publishing Co., advertising over the name of C. M. Thomas, Chicago, Ill., vendor-advertiser, is engaged in selling a magazine designated "Everyday Life", and in advertising represented:

BOYS—THIS WATCH IS FREE

Just to advertise our business and make new friends, we offer this fine railroad style engraved watch. Any boy who writes us can get this wonderful watch absolutely free. Send name and address.

C. M. Thomas, 92-W, 337 West Madison Street, Chicago.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions in that said watch is not given away free, nor is it engraved, as represented.

The respondent represents to the Federal Trade Commission that it has definitely discontinued the advertising herein found objectionable, 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 this 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 represent a premium or other object as obtainable "free", so long as services, or any other considerations, are required to procure; nor that any watch is "engraved" unless such be the fact.

It is also stipulated and agreed that if the said H. & S. Publishing 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. (Nov. 9, 1933.)

0570. Vendor-Advertiser—Hats and Caps.—Cincinnati Cap Co., operating under the trade name of Taylor Hat & Cap Manufacturing Co., Cincinnati, Ohio, vendor-advertiser, is engaged in selling hats and caps direct to consumers and in advertising represented:

I'LL PAY YOU \$10 A DAY**To Wear and Demonstrate My Amazing Hats**

My fine, super-quality wool felt and Belgian fur felt hats are taking the country by storm! I need men to wear sample hats, show them to friends, and take orders. Saving of \$2 to \$5 guaranteed on every hat.

EASY TO EARN \$12 A DAY**Showing Taylor Hats**

If you are looking for an easy way to earn big money, be my partner. Show my wool felt and Belgian felt hats to friends and take their orders. Six latest colors. Smartest spring and summer styles. You save them \$2 to \$5 and can make \$12 daily for yourself.

Wear Sample Hat**EARN UP TO \$75 A WEEK****Just Showing Taylor Hats and Caps Made-to-Measure**

Share big money as my partner, just showing my sensational values in felt hats to friends at sharply reduced prices. Five latest colors; exclusive new fall styles. Make \$12 a day easily!

Wear Sample Hat or Cap**SELL HATS****Make as High as \$15 a Day with Taylor Hats and Caps, Made-to-Measure**

All men glad to buy famous Taylor hats and caps direct from factory to you at \$2 to \$5 saving. My men are cashing in daily earnings up to \$12 just by showing these amazing hats. Sam Hoff made \$15 in 2 hours. Felt's record is 10 orders in 70 minutes. Harrell earned \$20 in 3 hours. You can get this easy money, too.

Wear and Show Sample Hat or Cap

That's the quick way sales are made. Nothing you could do could be easier or more profitable—join me in this big sensational hat and cap selling that is capturing men everywhere.

Up to \$15 daily pay, wearing and showing Taylor made-to-measure hats, caps. New low prices. No experience. Selling equipment free. Taylor Hat & Cap Mfrs., Dept. —, Cincinnati, Ohio.

when in truth and in fact said statements as to probable earnings by salesmen and the easy and simple method of making sales are incorrect in certain respects and exaggerated and misleading in others in that the reader is led to believe from such representations that the amounts named are the usual, common, and regular compensation received by agents of respondent for services in displaying its products; and furthermore that no skill or effort in salesmanship is involved, since the merchandise sells itself upon sight.

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.

Respondent further stipulates and agrees in soliciting the services of local agents for the purpose of selling its said merchandise to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation that the probable earnings of such agent would be an amount 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 same is contingent upon the volume of the agent's sales; or that a mere displaying of the merchandise is all that is required of the agent.

It is also stipulated and agreed that if the said Cincinnati Cap 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. (Nov. 15, 1933.)

0571. Vendor-Advertiser—Physical Culture Courses of Instruction.—Jowett Institute of Physical Culture, Inc., of Scranton, Pa., vendor-advertiser, is engaged in selling courses of instruction in physical culture, and in advertising represented:

I have added 7 inches to my chest, 4 inches to my biceps, 5 inches to my neck by using the Jowett system of physical training.—Larry Campbell.

What I did for Larry Campbell I am sure I can do for you.

* * * in no time at all you will be doing the one-arm pass with a 150-pound weight.

No matter what condition you are in now, I will put you through a special course so that when you graduate from my muscle factory your make-over will be the amazement of your friends, neighbors, relatives * * *.

No matter what your physical condition is right now I will teach you how to be capable of performing genuine Herculean feats of strength * * *.

Name your feats and I will give you the strength to do them.

The advanced course and supercourse will add to the wonderful thrill of getting strong, and will make you a superman of power.

* * * my method of muscle building never fails.

* * * my system never fails.

Within the first 30 days you can put 4 inches on your chest * * *.

Within 60 days I guarantee that you can lift overhead with one hand a man of your own body weight.

If you are the kind of fellow who is going to sit back and want to receive a letter from me about a reduction in price, save your time, because my price is

the same to one and all, no matter if it is the first or last letter you receive from me.

Get a 17-inch bicep complete course on arm building, only 25 cents.

Within 30 days you can now build your arm from a scrawny piece of skin and bone to one of huge muscular size. I don't mean just a 17-inch bicep but a 15-inch forearm and an 8-inch wrist.

30 days will give you an unbreakable grip of steel and a Herculean arm.

Mail your order now while you can still get this course at my introductory price of only 25 cents.

I guarantee to add at least 3 inches to your chest, 2 inches to your biceps.

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 following any of respondent's courses of instruction a person will be able to:

1. Increase the size of his biceps, forearms, or wrist to any definite measurement or by any definite amount, or
2. Develop his arm to huge muscular size,
3. Develop a grip of steel or a Herculean arm, or
4. Increase the size of his chest, or neck, by any definite amount,

or

5. Lift 150 pounds with one arm, or
6. Lift overhead a person of his own weight, or
7. Accomplish any definite physical development within any definite period of time, or;

(b) That by following any of said courses of instruction a person can obtain the same results that have been obtained by others, or

(c) That the regular price of any course of instruction is an introductory price; or

(d) That by following any of respondent's courses of instruction a person can develop any part of his body regardless of his physical condition; or

(e) That respondent can prescribe a course of instruction that will enable a person to accomplish any desired feats of strength; or

(f) That respondent's system never fails; or

(g) That a person can be a superman of power by following any of respondent's courses of instruction; or

(h) That the price of any of respondent's courses of instruction will not be reduced, unless and until the respondent shall discontinue the practice of allowing discounts for names of prospective students or for any other similar reason, and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Jowett Institute of Physical Culture, 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. (Dec. 1, 1933.)

0572. Vendor-Advertiser—Stomach Medicine.—George W. Flowers, trading as "R" Products Co., 143 North Wabash Avenue, Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation for treatment of hyperacidity of the stomach, and in advertising represented:

No more stomach miseries.

How often have you longed for immediate help to relieve you of that awful stomach misery—no doubt hyperacidity—excess acid, which claims its victims by the thousands, darkens their lives, robs them of health, strength, and vigor; kills ambition, hope, and courage; saps the strength, impoverishes the blood, makes millions weak and unfit. As a corrective for this misery you are urged to take "R" tablets.

Help for stomach miseries.

You can now have a well stomach.

If you, like thousands of others, are suffering with stomach disorders, distress after eating, and other such miseries, it makes no difference how many remedies or patent medicines you have tried, you are urgently requested to send for "R" tablets.

Send today and see how quickly you can have a well stomach.

"R" tablets are for the relief of both occasional and established disorders. Your stomach will be well.

"R" tablets literally wipe out the excess acid.

You can eat what you like and digest your food in comfort without fear of after effects.

* * * don't be misled into taking tonics that simply spur on your appetite. They are of little good * * *.

Keep your stomach sweet and clean and strong, and you will naturally get the full strength out of your food; in turn your mind and body will be strong and vigorous.

Statistics tell us that 9 out of 10 people suffer from lost vitamins by acid stomach.

* * * some of the most serious sicknesses originate from stomach ailments. It, therefore, behooves you to have a well stomach.

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 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 miseries, stomach disorders, or distress after eating unless clearly indicated that it will be effective only when such ailments are caused by gastric hyperacidity.

(b) That by the use of said medicinal preparation a person can (1) have a well stomach; (2) eat what he likes and digest his food in comfort without fear of after effects; (3) keep his stomach strong; (4) get full strength out of the food eaten; (5) strengthen the mind or body.

(c) That said treatment will "wipe out" excess acid or otherwise representing that permanent relief can be attained.

(d) That said medicinal preparation is a competent treatment for "established" disorders.

(e) That tonics are of little value or should not be taken.

(f) That said medicinal preparation will be effective in cases where other treatments have failed.

(g) That hyperacidity or excess acid is a menace to health, strength, or vigor; that it kills ambition, hope, or courage; that it impoverishes the blood; that it makes millions weak or unfit, or that any of these conditions can be remedied or avoided by the use of respondent's medicinal preparation.

(h) That any definite proportion of people suffer from lost vitamins by acid stomach unless such proportion can be verified by reliable statistics; and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said George W. Flowers 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 (Dec. 1, 1933).

0573. Vendor-Advertiser—Poultice Plaster.—E. E. Bayles, trading as Bayles Distributing Co., 1804-1806 Grand Avenue, Kansas City, Mo., vendor-advertiser, is engaged in selling a poultice plaster for the treatment of leg sores and troubles and in advertising represented:

Anti-Flamma Poultice Plaster. The specific for leg sores and all leg trouble. Guaranteed under pure food and drug act.

* * * the plaster destroys the poisons * * *

The very worst cases of long standing respond to Anti-Flamma Plaster after other potent remedies fail * * *.

The remedy is prompt to attack proud flesh and diseased tissue in a sore * * *.

It is a powerful fungicide.

Anti-Flamma poultice plaster * * * will nourish the new-forming tissues.

The only persons who fail to derive results from Anti-Flamma Plaster are those who depend solely upon the sample to demonstrate the worth of the remedy; those who do not read or comply with our directions, hence use the plaster wrongly, or fail to inform themselves and are in ignorance as to what they may expect; those who are not willing to endure the inconvenience resulting from the reduction or cleansing process; those who grow impatient; those who practice false economy and wear each application too long; who fail to

cover the discolored, inflamed and swollen part of the limb; who grow careless and fail to keep it continually applied; who use Anti-Flamma in a faint-hearted, half-way manner, because they have lost all hope of ever being cured and use it only for relief; and those who quit before finishing because the leg has ceased to bother them.

* * * the plaster neutralizes the active poisons * * *.

Stops the itching. At this stage of the disease, Anti-Flamma is the only remedy capable of reaching and reducing the trouble through the skin, and the only one that will absolutely stop that terrible itching.

Fungus growths * * *. It is upon this form of diseased legs that the plaster does its most wonderful work of supplanting surgery, only Anti-Flamma removes the growths without harming the healthy flesh. It also dissolves diseased bone * * *.

Anti-Flamma is absolutely the only medicine ever discovered that will reach those growths and cause them to be absorbed, or destroy and remove them outright * * *.

* * * Anti-Flamma does purify the blood * * *.

Do not forget that after a leg sore goes beyond a certain stage, nothing but Anti-Flamma will reverse the condition and bring about a cure * * *.

Anti-Flamma is a perfect application for any condition on the body accompanied by acute inflammation, irritation either upon or beneath the surface; or where there are unnatural growths in the flesh including cancerous conditions * * *.

which statements the Federal Trade Commission deems are incorrect, exaggerated and misleading in that said poultice plasters cannot be depended upon to heal all leg sores and ulcers and other conditions mentioned in the representations above quoted; none of the ingredients of said plasters is recognized as a fungicide; and the plasters do not contain any ingredients which will purify the blood or nourish the tissues.

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 plaster will heal, cure, eradicate, or stop (1) leg troubles, (2) sores, (3) ulcers, (4) fungus growths, (5) any condition on the body accompanied by acute inflammation or irritation, (6) unnatural growths in the flesh, (7) cancerous conditions, (8) itching, (9) blood poison; unless such statements are qualified to indicate that said poultice may not be effective in all cases;

(b) That said plaster is a specific for leg sores or leg troubles;

(c) That the worst cases respond to said plaster after other potent remedies fail, without indicating that such cases are exceptional rather than general;

(d) That said plaster will effectively attack proud flesh and diseased tissue in a sore;

(e) That said plaster is a fungicide;

(f) That said plaster will nourish tissue, destroy poisons, neutralize poisons, dissolve diseased bone or purify the blood;

(g) That the only persons who fail to derive results from said plaster are those who do not use enough of the plaster, or who do not follow instructions of respondent;

(h) That said plaster is the only remedy that will stop itching caused by sores, or that will reach such trouble through the skin, or that will absorb or destroy fungus growths;

(i) That said plaster will be effective in cases that have advanced beyond the reach of surgery or that it will supplant surgery;

(j) That said plaster removes the cause of sores, without indicating that such result is only obtained where the infection is local;

(k) That after a sore goes beyond a certain point nothing but said plaster will bring about a cure;

(l) That said plaster is guaranteed under the pure Food and Drugs Act; and all statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said E. E. Bayles 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. (Dec. 1, 1933.)

0574. Vendor-Advertiser—Rheumatic Treatment.—D. H. Buxton, trading as Buxton Medicine Co., Abbot Village, Maine, vendor-advertiser, is engaged in selling a treatment for muscular aches and pains attributed to rheumatism, designated “‘Buxton’s’, a special compound”, formerly known as “Buxton’s Rheumatic Specific”, and in advertising represented:

FOR RHEUMATISM TAKE BUXTON'S

A Special Compound

You will not regret it. For sale at all leading drug stores. Let us send you a booklet. Buxton Medicine Co., Abbot Village, Maine.

The compound is doing wonderfully good work for rheumatic sufferers. We are constantly receiving letters telling of the cure of the most severe cases of rheumatism, including arthritis. It not only eliminates rheumatism but is wonderfully good for the stomach and builds up the entire system.

I am interested that each patient using the compound receives the full benefit of the treatment, a cure.

Buxton's Special Compound

A specific for all forms of rheumatism, including neuritis and arthritis. It not only eliminates rheumatism but is wonderfully good for the stomach and builds up the whole system.

Give Buxton's a Chance to Eliminate Your Rheumatism

D. H. Buxton, a druggist of Abbot Village, Maine, * * * was taken with sciatic rheumatism. * * * He determined that there was a cure for this disease and went about to find it. * * * He tried the medicine upon himself, to the result that he was completely and permanently cured. * * * His friends, knowing of his wonderful and successful cure, tried the compound with the same good results.

It has proven not only a specific for rheumatism, but as in many cases rheumatism being a secondary disease arising from a diseased liver, stomach, kidneys, etc., it has gone at once to the seat of diseases, eliminated these, and driven rheumatism from the system.

No doubt but everyone who has had rheumatism and been cured will be glad to assist any person afflicted with so terrible a disease by sending us a testimonial.

RHEUMATISM

Varieties

The following varieties of rheumatism are:

Articular rheumatism, which affects the joints and muscles of the extremities.

Lumbago, affects the joints and back.

Neuritis, affects the nerves.

Sciatica, occurs in the hip joints.

Spurious pleurisy, occurs in the muscles of the diaphragm.

Arthritis, occurs in joint deformity.

Classes

We may divide rheumatism into two classes: Acute rheumatism and chronic rheumatism. Acute or inflammatory is felt by severe and piercing pains. * * *

Arthritis and chronic arthritis are the most severe forms of rheumatism, * * * Chronic arthritis is not an incurable disease but it often requires a long treatment. We ask all arthritis patients to write us a description of their case, as often we can give advice which will hasten the specific to eliminate their disease.

Any disease that tends to lower the vitality, weaken the system, gives a chance for rheumatism to get in its work.

"Buxton's" a special compound eliminates all forms of rheumatism.

Take "Buxton's" a special compound for indigestion and prevent rheumatism.

Action of the Specific

Constitutionally sufferers differ, also the causes of rheumatism differ, therefore, while many sufferers have had their rheumatism eliminated by 1, 2, or 3 bottles of compound, others have required a longer treatment.

Testimonials

I had a very bad fall, and arthritis developed in my right knee. * * * I am very grateful for the relief I derived from the specific, it did wonders for me and cured me.

I was troubled with rheumatism since a boy. * * * Three years ago, I commenced taking Buxton's rheumatic specific. After taking 14 bottles, I had a complete cure, and have been free from rheumatism ever since.

I believe all suffering with rheumatism can get a cure if they will take a sufficient amount of the specific.

This is to certify that as far as my present condition is, I am completely cured of rheumatism.

I had a severe case of rheumatism. * * * A friend recommended your specific. After taking seven bottles of specific, I have a complete cure, and am feeling fine.

I am feeling fine, and have not suffered with rheumatism since being cured.

I would like to tell all rheumatic sufferers that the specific is a medicine of real merit and to encourage them to continue the treatment until they, too, receive a complete cure.

I was taken with arthritis, being paralyzed and every joint swollen * * * procured a bottle of "Buxton's Rheumatic Specific" * * * am doing my own housework, and nearly free from rheumatism. I am a marvel to everyone who knew what I went through and how your remedy brought me out.

Second Bottle Entirely Cured Him

* * * he called my attention to Buxton's Rheumatic Specific. I purchased two bottles and followed the directions to the letter and about a week before I had finished the second bottle, my lameness had entirely left me.

A year ago I was suffering very much from rheumatism and Mr. Bigelow got me a bottle of Buxton's rheumatic specific. That bottle helped me so much that I got another and it cured me.

I have had rheumatism ever since I can remember, more or less, and I am glad to be free from it.

I was a great sufferer from neuritis. Tried all the doctors around, but they could give me but small relief. A friend, who had been permanently cured by your "Specific" got me to try it. In 2 weeks I was at work and it has never troubled me since. My wife, who had suffered for years from stomach trouble, nervousness, and insomnia, was entirely cured.

I commenced taking Buxton's rheumatic specific. After the first bottle was taken I commenced to feel better and after taking six bottles I was entirely free from rheumatism and have been ever since.

I'm thankful for the good your rheumatic specific did for me, for now I'm well as ever after being on crutches with rheumatism in my right knee.

Some kind friend must have sent you my name, as I received a booklet. After reading the same I decided to give the specific a trial. Before I had finished one bottle I was better. Your specific has given me a complete cure.

BUXTON'S

A Special Compound—A Specific For All Forms of Rheumatism

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions in that an analysis of the ingredients constituting such compound discloses that it is neither a specific nor a cure for rheumatism, lumbago, arthritis, neuritis, sciatica, or other serious disease conditions; and that its benefits are limited to the

relief of the discomfort of gout, muscular aches and pains, simple neuralgia, and headache, the reducing of fever, and an aid in the prevention of simple goitre.

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 Buxton's Compound is a competent treatment or an adequate remedy for rheumatism in any of its forms;

(b) That it "eliminates" rheumatism;

(c) That it is a "specific" for all forms of rheumatism or for neuritis or for arthritis, or any form of rheumatism whatsoever, or for any other kind of ailment;

(d) That sciatic rheumatism may be completely and permanently cured by the use of said compound; or that its use will effect a "cure" of any kind of rheumatism;

(e) That said compound has "gone at once to the seat of diseases", among them diseased liver, stomach, and kidneys, and "eliminated" them; or that it has any effect whatsoever upon the causes of such disease conditions;

(f) That it has "driven rheumatism from the system";

(g) That either articular rheumatism or lumbago or neuritis or sciatica or spurious pleurisy or arthritis may be adequately treated by the use of this compound;

(h) That either acute rheumatism or chronic rheumatism can be eliminated by the use of said "specific";

(i) That the use of said compound can "prevent" rheumatism;

(j) That regardless of the causes of rheumatism and the constitutional condition of the sufferers, their rheumatism can be eliminated by the use of a sufficient quantity of this compound;

(k) That the use of said compound has "entirely cured" stomach trouble, nervousness, and insomnia;

(l) That the benefits of such medicine extend beyond the relief of the discomfort of gout, muscular aches and pains, simple neuralgia, the reducing of fever and an aid in the prevention of simple goiter; and all representations and statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said D. H. Buxton 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. (Dec. 8, 1933.)

0575. **Publisher—Ointment.**—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 Grays ointment.

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 define 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 he has notice. (Dec. 29, 1933.)

0576. **Vendor-Advertiser—Feminine Hygiene Preparation.**—Arthur A. Nottenburg and Daisy Sanders, trading as Zenome Products Co., New York City, vendor-advertiser, are engaged in selling a preparation for use in feminine hygiene designated "Zenome", and in advertising represented:

FOR WORRIED WOMEN ONLY

Use Zenome—Quick Results Guaranteed

Why worry or suffer every month because of delayed periods due to unnatural causes. Stubborn and long overdue cases safely and sanely relieved. No interference with duties. Send \$1 for full treatment postpaid in plain sealed wrapper.

ZENOME PRODUCTS CO.

236 West Fifty-fifth Street, New York

FOR WORRIED WOMEN ONLY

Use Zenome for Quick Results

Delayed periods due to unnatural causes safely and sanely relieved. Moves stubborn and long overdue cases. No interference with duties. Send \$1 for 24 full-strength tablets rushed postpaid in plain sealed wrapper.

ZENOME PRODUCTS CO.

236 West Fifty-fifth Street, New York

The Federal Trade Commission from an investigation made, has reason to believe that the foregoing representations are misleading, to the injury of the public and of competitors, in that the text indicates to readers that this product is an effective and safe abortifacient,

whereas the formula submitted discloses that said preparation is not entitled to the classification of an abortifacient, cannot be depended upon to produce abortion, and is neither safe nor harmless because of the presence in said compound of at least two drugs, ergot and cannabis, which, if used indiscriminately, are capable of producing injurious and serious effects.

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) Either directly or inferentially, that said product may be used as an effective abortifacient;

(b) That said product is intended for the use of "worried women";

(c) That said product is either safe or harmless;

(d) That quick results are guaranteed by the use of said product;

(e) That said product moves stubborn and long overdue cases of delayed menstruation; and all representations and statements equivalent thereto in form or substance.

It is also stipulated and agreed that if the said Arthur A. Nottenburg and Daisy Sanders, or either of them, 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 them in the trial of the complaint which the Commission may issue. (Jan. 8, 1934.)

0577. **Publisher—Correspondence Course of Instructions in eating to cure many diseases, etc.**—The publisher of a Psychology 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 of instructions in eating to cure many diseases, 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 he has notice. (Jan. 12, 1934.)

0578. **Publisher—Antiseptic Deodorant.**—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 an antiseptic deodorant.

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 he has notice. (Jan. 12, 1934.)

0579. **Publisher—Hair Dye.**—The publisher of a style 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.

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 he has notice. (Jan. 17, 1934.)

0580. **Vendor-Advertiser—Stomach Ulcer Treatments.**—Akaps Laboratory, Knoxville, Tenn., vendor-advertiser, is engaged in selling a medicinal preparation for treatment of certain stomach ailments, and in advertising represented:

Stomach ulcers healed in 3 weeks.

For the treatment of stomach ulcers—duodenal ulcers * * * pain after eating—heart burn—gas pains—flatulence * * *.

Stops pain in 3 minutes. Heals ulcer in 3 weeks.

Akaps conquers desperate cases of ulcer.

And while alkalis momentarily relieve, in the long run the more you take the sicker you will be—the oftener you will have recurrences.

Akaps * * * protects ulcerated or irritated parts from abrasion of rough foods and from irritation by free acid * * * tends to reduce the bleeding of ulcers.

There are just two conditions required in order that Akaps may get you well—unfailingly * * *.

If you will maintain that condition of comfort for 2 or 3 weeks by the regular use of the capsules according to the directions—you will heal up any ulcerations present and discipline the secretion of gastric acid—and you will get well * * *.

You can get well—you can eat most anything you crave without the penalty.

If you have nausea, or a burning feeling in the throat, or a pain in the abdomen, lower chest, or back—or if you have hunger pains, or any type of distress regularly after eating, or if your case has been diagnosed by a competent physician as acid stomach or ulcer, or hyperacidity—then Akaps will not only help you, will not only relieve you, but will get you well perfectly * * *.

You don't need to have X-rays or stomach pumping to tell you when you have excess acid. Your discomfort, whatever it may be or whenever it may be, tells that.

There is no other way.

How you can succeed in getting rid of your stomach trouble * * *

When taken in the correct manner Akaps has never failed. It cannot fail if your trouble is caused by excess acidity of the stomach—if you have gas pains, heartburn, bloating distress regularly after eating, or ulcers.

No dieting required * * *

The Federal Trade Commission from investigation made has reason to believe that said statements are incorrect in certain respects and exaggerated and misleading in others in that the benefits which may reasonably be expected from the use of said preparation are limited to the relief of mild cases of hyperacidity or sour stomach, and it would have no effect on ulcers other than symptomatic relief in cases of peptic ulcers.

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 medicinal preparation is a competent treatment for ulcers unless such representations are limited to symptomatic relief in cases of peptic ulcer;

(b) That the use of said medicinal preparation will stop pain in 3 minutes;

(c) That said medicinal preparation will protect ulcerated or irritated parts from abrasion of rough foods or from irritation by free acid;

(d) That said medicinal preparation tends to reduce the bleeding of ulcers;

(e) That use of said medicinal preparation will cause one to get well;

(f) That no diet is necessary while taking said preparation;

(g) That said medicinal preparation is a competent treatment for nausea, burning feeling in the throat, pain in the abdomen, pain in

the lower chest, pain in the back, hunger pains, distress after eating, stomach trouble, heartburn, gas pains, or flatulence, unless said representations are clearly qualified to indicate that beneficial results may only be expected in cases where the ailments mentioned are due to hyperacidity of the stomach;

(h) That said medicinal preparation is a positive cure for any ailment;

(i) That there is no other way of treating the various ailments mentioned;

(j) That said medicinal preparation has never failed or that it cannot fail;

(k) That discomfort suffered by an individual is an indication of excess acid or that other methods of diagnoses are not necessary;

(l) That other preparations merely afford momentary relief or that the use of other preparations will make one sicker or cause more frequent recurrences;

and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said respondent 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. 19, 1934.)

0581. Vendor-Advertiser—Medicinal Preparation.—Dr. D. Jayne & Son, Inc., Philadelphia, Pa., vendor-advertiser, is engaged in selling a medicinal preparation designated as "vermifuge" and represented as a treatment for stomach and intestinal worms, and in advertising represented:

Thin, sickly tots grow fat and strong as soon as you banish intestinal parasites with Dr. Jayne's vermifuge.

A few pennies will stop your suffering and start you gaining weight and pep at once.

Dangerous worms cause stubborn pains that defy every stomach remedy.

Such pains, due to worms, may have defied every medicine and treatment, but end as soon as these disgusting health-destroying parasites have been expelled by Dr. Jayne's vermifuge.

* * * the surest way to rid old and young of this mysterious trouble.

A few pennies' worth of Dr. Jayne's vermifuge may end stubborn chronic pains that for years have resisted every treatment * * *.

There is no sure way to guard your child against this disgusting and appalling plague.

With Dr. Jayne's vermifuge at hand no mother need worry. Even a single spoonful may end the parasites.

It also precludes the possibility of worms.

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 medicinal preparation will:

1. Banish intestinal parasites; or
2. Stop suffering; or
3. End stubborn or chronic pains that have defied or resisted other treatments; or

(b) That the use of said medicinal preparation will:

1. Cause sickly children to grow fat or strong; or
2. Enable one to gain weight or pep; or
3. Preclude the possibility of worms; or

(c) That said medicinal preparation is the surest way to rid a person of stomach or intestinal worms; or

(d) That stomach or intestinal worms are a plague; or

(e) That with said medicinal preparation at hand, no mother need worry;

(f) That one teaspoonful may end stomach or intestinal worms;

(g) That the therapeutic properties of said medicinal preparation are more or other than a treatment for round worms;

(h) That other preparations have been unsuccessful in the treatment of stomach or intestinal worms;

and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Dr. D. Jayne & Son, 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. (Jan. 19, 1934.)

0582. **Publisher—Christmas Gifts.**—The publisher of a salesman'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 Christmas gift assortments.

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 he has notice. (Jan. 24, 1934.)

0583. **Publisher—Beer Signs.**—The publisher of a salesman'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 beer signs.

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 he has notice. (Jan. 24, 1934.)

0584. **Publisher—Rubber Girdles, Belts, Brassieres and Suits.**—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 rubber girdles, belts, brassieres, and suits.

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 he has notice. (Jan. 24, 1934.)

0585. **Publisher—Rubber Belts, Brassieres, Girdles and Form-Fitting Suits.**—The publisher of a photoplay periodical 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 rubber belts, brassieres, girdles, and form-fitting suits.

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 he has notice. (Jan. 24, 1934.)

0586. Publisher—Text Book and Lessons on Magnetic Healing.—The publisher of a psychological periodical 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 textbook and lessons on magnetic healing.

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 he has notice. (Jan. 24, 1934.)

0587. Publisher—Dough for Cheese Chips.—The publisher of a salesman'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 dough for cheese chips.

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 he has notice. (Jan. 24, 1934.)

0588. Publisher—Tube Signs.—The publisher of a salesman'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 Lammon's tube signs.

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 he has notice. (Jan. 24, 1934.)

0589. **Publisher—Food-Making and Display Machines.**—The publisher of a salesmen'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 food-making and display machines.

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 he has notice. (Jan. 24, 1934.)

0590. **Publisher—Soaps.**—The publisher of a salesmen'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 soap in assorted boxes.

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 (he, they, or it) (has or have) notice. (Jan. 24, 1934.)

0591. **Publisher—Rubber Mats.**—The publisher of a salesmen'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 rubber cushion mats for house use.

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 (he, they or it) (has or have) notice. (Jan. 24, 1934.)

0592-0594. **Publishers—Cough and Cold Medicines.**—Respondents,¹ 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 a medical preparation for coughs and colds.

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 (he, they or it) (has or have) notice. (Jan. 24, 1934.)

0595-0597. **Publishers—Cough and Cold Medicines.**—Respondents,² 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 a medical preparation for coughs and colds.

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

¹ The stipulations appear to be identical, except for the fact that respondent in 0592 is a publisher of a large Midwest evening daily newspaper, respondent in 0593 is a publisher of a large southern newspaper, and respondent in 0594 is a publisher of a large southern daily newspaper.

² The stipulations appear to be identical, except for the fact that respondent in 0595 is a publisher of a large Virginia daily, respondent in 0596 is a publisher of a large Indiana daily, and respondent in 0597 is a publisher of a large Missouri daily.

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 he has notice. (Jan. 24, 1934.)

0598. **Vendor-Advertiser—Luminous Tube Signs.**—William C. Sage, trading as Cincinnati Luminous Tube Co., 205-207 Vine Street, Cincinnati, Ohio, vendor-advertiser, is engaged in selling luminous tube signs direct through agents, and in advertising represented:

Our representatives are earning up to \$100 per week.

Up to \$100 a week for you selling merchants new neon signs.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting agents, sales persons, or dealers to sell said merchandise in interstate commerce, to cease and desist from publishing and circulating, or causing to be published and 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:

(a) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Feb. 7, 1934.)

0599. **Publisher—Christmas and Greeting Cards.**—The publisher of a salesmen'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 Christmas and greeting 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 he has notice. (Feb. 7, 1934.)

0600. **Publisher—Toiletries and Cosmetics and Puzzle Premium Plan of Selling.**—The publisher of a fraternal magazine of large interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of toiletries and cosmetics sold by the puzzle premium progressive plan.

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 he has notice. (Feb. 7, 1934.)

0601. **Publisher—Hair Dye.**—The publisher of a midwestern daily newspaper of large midwestern 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 he has notice. (Feb. 16, 1934.)

0602. **Publisher—Gas Engine Attachment.**—The publisher of a magazine catering to direct sellers, 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 Gas-O-Fyer to increase vaporization of gasoline in gas engines.

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 he has notice. (Feb. 16, 1934.)

0603. **Publisher—Flesh and Weight Reducing Laxative.**—The publisher of a large western 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 a flesh- and weight-reducing laxative.

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 he has notice. (Feb. 16, 1934.)

0604. **Publisher—Flesh and Weight Reducing Tablets.**—The publisher of a photoplay magazine of national circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of flesh- and weight-reducing 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 he has notice. (Feb. 16, 1934.)

0605. **Publisher—Feminine Hygiene Preparation.**—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 a female hygiene preparation.

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 he has notice. (Feb. 23, 1934.)

0606. **Vendor-Advertiser—Flesh and Weight Reducing Prescription.**—Glenn Laboratories, Inc., of New York City, vendor-advertiser, is engaged in selling an alleged flesh- and weight-reducing prescription known as "RX 157", and in advertising represented:

RX 157

Reduce 2 to 4 Pounds Weekly Safely, Surely, and Easily

RX 157 converts food into fuel and energy. RX 157 is safe, effective, harmless. No excessive dieting!

REDUCE

Safely, Surely, Easily 2 to 4 Pounds Weekly

Now! A new and safe way of reducing 2 to 4 pounds weekly! Safely, surely, easily.

Fashion decrees a slender figure, and you can have it with radiant health in the bargain. It is unnecessary to starve yourself with rigid dieting in order to lose excess fat. Nor is it necessary to tire yourself and weaken the system through the medium of too strenuous exercising.

Graceful posture and poise come with this new figure you will acquire. Health, too! Health that will glow in a rosy complexion free from sallowness, wrinkles, flabbiness, and fag lines.

This new method of reducing is RX 157. It combats the cause of the trouble, which usually lies in a gland. The chief purpose of RX 157 is to correct a

deficiency due to an underactive thyroid gland. The thyroid secretion controls nutrition, and one of its purposes is to help change certain food into fuel and energy.

Hundreds of men and women of every weight, age, and condition of life have been benefited by this doctor's prescription. You owe yourself a trial of this ideal method. Begin to control your weight by this new, easy way. Results are guaranteed—or money refunded. The price is \$1.

To obtain the best results from RX 157 it is necessary to nourish the body. You can eat well—and regularly. Select foods that are nourishing rather than fattening. Avoid starches and sweets in excess. Cut down fatty foods—instead, eat plenty of poultry, eggs, lean meats, sea foods, and fresh vegetables. Eat plenty of fresh fruit—it aids digestion. Eat all you want and regularly.

[Diet lists for breakfast, lunch, and dinner]

Avoid

All starchy foods, such as potatoes, rice, spaghetti, macaroni, etc. All sweets in foods and candies. Pork, ham, or bacon. Meat fats. Olive oil, butter, and cheese. Salmon and sardines packed in oil.

The Federal Trade Commission from an investigation made has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions that the use of said "RX 157" will accomplish in all cases the results set out or indicated therein, whereas the medical advice received by the Commission is to the effect that this preparation is neither new nor safe nor sure in that while it will cause a loss of weight in many cases at the same time serious damage will result; and if administered without medical supervision, it may cause nervous and digestive troubles, heart disturbances, headaches, delirium, often collapse, coma, and even death.

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 product is new; or
 - (b) That it is safe; or
 - (c) That it is sure; or
 - (d) That with it women may reduce 2 to 4 pounds weekly either safely or surely, or easily; or
 - (e) That it converts food into fuel and energy; or
 - (f) That it is safe, effective, harmless; or
 - (g) That this treatment involves no excessive dieting;
- and all representations of like import. (Feb. 23, 1934.)

0607. Vendor-Advertiser—Laxative.—The Nature Herb Co. o. Seattle, Wash., vendor-advertiser, is engaged in selling a laxative medicine made of roots, barks, and herbs and designated Sen-Gen-Ma, and in advertising represented:

SEN-GEN-MA

Intestinal Activator, Antacid, Laxative

A combination of roots, barks, and herbs for relieving constipation, stomach and bladder disorders, rheumatism, kidney troubles, indigestion, impure blood, and eczema.

TONIC LAXATIVE—SEN-GEN-MA

Puts the fight back into you. Sen-Gen-Ma revitalizes the blood that has been impoverished by disease and makes you fit to fight the world again when taken systematically and persistently.

Nature's Remedy, Composed of Roots, Barks, Herbs

Sen-Gen-Ma is effective in the relief of stomach trouble, eczema, bad blood, constipation, liver, and kidney trouble, rheumatism, and similar ailments, or as a tonic laxative.

I was affected with epileptic fits since 1918 and was so bad I had about 10 or 12 fits a day, which lasted about 40 minutes. I was treated by the Mayo Bros. at Rochester, Minn., and was told by them that there was no hope for my recovery. * * * I started to take Sen-Gen-Ma February 1925, and in March I had my last fit and have not had one fit since then. When I started to take Sen-Gen-Ma I weighed 141 pounds and today I weigh 172 pounds and owe all the cure and my life to Sen-Gen-Ma.

On the 10th of January 1925, I was advised by the doctors of Great Falls, Mont., to come to Seattle for my health and told by them that I had consumption and could only live 6 weeks. I started to take Sen-Gen-Ma upon my arrival, and today, the 1st of June, I am on my way back to Montana in fairly good health and 10 pounds heavier than when I came here. I believe I owe my life to Sen-Gen-Ma. I was sick 14 years and feel better today than any time during the years of my illness.

At the time I started to take Sen-Gen-Ma, my leg was a running sore and the doctors told me I had to have it taken off * * * but when I had taken one bottle of Sen-Gen-Ma my leg started to heal and today is sound and well, just leaving the scar.

Everyone's mouth and nasal passages contain, from time to time, germs of typhoid, pneumonia, grippe, and tuberculosis. The healthy body is the one that resists them, throws them off, destroys and eliminates them. Microbes hurt those people that are too weak to combat them.

Sen-Gen-Ma purifies the blood and gives it that fighting quality.

* * * three years ago was sick with inflammatory rheumatism and my ankles were so badly swollen I could hardly get around to do my work. * * * in April I was advised to take Sen-Gen-Ma and this 22d day of June I am sound and well from using it.

I have suffered from ulcers of the stomach for the past 3 years and have spent over \$1,500 with the doctors. They wanted to operate on me but I would not let them.

I could not eat anything but raw eggs and milk and was very weak, but before I had taken one box of your Sen-Gen-Ma, I was up out of bed doing all my housework and eating my meals regularly and out of pain.

I have gained over 50 pounds in the past 4 months and I feel that I owe all my health to your Sen-Gen-Ma, and I will never be without it.

I have been sick for years with catarrh and throat trouble. Have spent \$500 with one doctor in Buffalo, N.Y., and have spent more money in drug stores but got no relief. * * * In April on the 10th of the month I started to take Sen-Gen-Ma and today the 29th of June, I would not take \$10,000 for what Sen-Gen-Ma has done for me.

Two years ago I was afflicted with liver and gall-bladder trouble. The doctor gave me 5 months to live. He said there was no cure for me. * * *

My son recommended Sen-Gen-Ma, and I treated myself with this remedy continuously through the months of April and May.

When I started taking this remedy, I weighed 120 pounds and I now weigh 151, making a gain of 30 pounds in a little over 2 months.

I am surely grateful for this wonderful remedy, because it saved me from suffering and death.

The doctor said I would never work again—that I had Bright's disease. I also had bladder trouble, and such spells with my heart that we despaired of my life. Was sick all last year. I got this medicine on the 28th of December, and now I am doing all my own work. I am just feeling fine. Don't feel that I ever was sick. I can't praise Sen-Gen-Ma enough.

As you know, the above herbs are instrumental and successful in the treatment of many stomach disorders, constipation, poor circulation of blood, kidney trouble, and as a general beneficial tonic.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions in that an analysis of the formula of Sen-Gen-Ma discloses that the product composed of said ingredients would serve principally as a laxative, stomachic, carminative, and diuretic mixture, but would not be a preventive or an effective treatment for the various ailments and disorders mentioned.

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 describing, labeling, branding, or otherwise designating same as a tonic; and from representing in advertisements or otherwise that said medicinal preparation is either a preventive, or a competent treatment, or an effective remedy for any of the following:

Stomach disorders and stomach	Rheumatism
trouble	Kidney troubles
Bladder disorders	Indigestion

Impure blood
Eczema
Epilepsy
Consumption
Running sore
Typhoid
Pneumonia
Grippe

Tuberculosis
Inflammatory rheumatism
Stomach ulcers
Catarrh and throat trouble
Liver and gall bladder trouble
Bright's disease
Spells with heart
Poor circulation of blood

and all representations and statements thereto in form or substance.
(Feb. 26, 1934.)

0608. **Vendor-Advertiser—Medical Preparation.**—Mr. George Schwager, trading as Schuyler preparations, New York City, vendor-advertiser, is engaged in selling a preparation designated "Schuy-Tone Tablets" for the treatment of shyness, bashfulness, blushing, stammering, lack of personality, lack of confidence, lack of courage, self-consciousness, nervousness, timidity, and lack of poise, and in advertising represented:

Are you missing all the good things and good times in life because you are bashful and shy? Girls and boys, men and women who are timid, nervous, self-conscious and easily embarrassed never have much fun. How do you expect anybody to seek your acquaintance and companionship if you lack confidence in yourself?

It is not always the good-looking attractive men and women who are showered with all the attention. To be popular—always in demand at parties, one must be a good mixer and possess a pleasing personality. Why should you sit at home feeling blue and out of sorts—no place to go—nobody to see.

If you are now suffering from shyness, bashfulness, blushing, stammering, lack of personality, lack of confidence, lack of courage, self-consciousness, nervousness, lack of poise, you should read every word of this letter and circular.

Recently we had the good fortune of securing the formulae of a famous scientist used privately with astonishing results. This wonderful preparation is known as Shuy-Tone. It develops confidence, poise, and courage. It helps eliminate bashfulness, blushing, and timidity.

Schuy-Tone has helped school teachers, stenographers, people in public office, salesmen, preachers, and men and women in love conquer the terrible bugaboo, "bashfulness."

Try Schuy-Tone. Convince yourself as to the merits of this wonderful remedy. Schuy-Tone goes to the root of the trouble. It supplies the elements nature must have to give you self-confidence and courage.

Enclosed in this letter you will find a pamphlet which describes in detail—The Wonder Confidence Builder. After you have read this pamphlet, fill in the convenient order blank and send it in the addressed envelop. As an introductory offer, we are going to send you a large, full size, 1 month's treatment for only \$3 (regular price \$5). You save \$2 by ordering now.

So effective is this preparation that it rarely, if ever, fails. No matter how long you might have suffered, your case can be helped. Decide now—this very minute, to overcome once and for all this dreadful and humiliating and embarrassing affliction.

For bashfulness, self-confidence, poise, courage, blushing, stammering, personality, magnetism, Schuy-Tone leads the way.

Stuttering and stammering.—Stuttering in most cases is due to bashfulness, self-consciousness and embarrassment. To produce an easy flow of perfect speech, there must be no nervousness, emotionalism, or lack of confidence.

What is happiness worth?—Usually people who are suffering from shyness, bashfulness, self-consciousness, and lack of self-control welcome the opportunity of learning how to overcome these handicaps. Why go on depriving yourself of enjoying social life or hinder your business career, when it is so easy to master your timidity and bashfulness? What is the fulfillment of these unsatisfied longings and heartaches worth to you?

Schuy-Tone has worked miracles. No more blushing, embarrassment, or feeling ill at ease. No more agony of meeting people for the first time or being in the company of the opposite sex. Your remedy has helped me more than I can say.

Develop self-confidence and poise this new delightful way.

Schuy-Tone eliminates bashfulness, shyness, blushing.

Do you feel at the end of the day that you have pursued half the social duties—gained even half the real pleasures of life that are your natural share? Or do you feel that if only you could overcome the tragedy of bashfulness, you would be able to go about among strangers or members of the opposite sex, quite cool and composed and be able to converse freely without the slightest suspicion of embarrassment.

Be sensible about bashfulness.—Take a sensible attitude toward your bashfulness. Let me prove that I can easily make you happy and show you how to gain self-confidence and poise. Once you have accomplished this, your future, both in business and society, will be an assured success.

Why suffer mental torture?—If you stay as you are now and do not make an attempt to rid yourself of this weakness, it will probably remain a part of your character for the rest of your life. There are, no doubt, thousands of talented men and women today plodding along on a miserable salary, afraid of their own souls and galled all the while by the knowledge that if only opportunity might present itself, they would show the world their real worth and strength.

Neglect is serious.—Neglect often causes the trouble to become worse day by day, with the result that even the health and vitality is seriously affected. There is no longer the slightest reason why you should labor under the handicap of bashfulness, blushing, and lack of confidence.

If you are earnest in your desire to help yourself, why not save further worry and expense by grasping your opportunity now? Self-confidence and poise are the most valuable social and business assets in all spheres of life.

Be master of yourself.—If you want to be master of yourself and your surroundings, you must first have a healthy, vigorous nervous system free from bashfulness and shyness.

Nerve power spells success.—Have you not often observed that the men and women of power command every situation—how they are looked up to and respected? Others are glad to obey and carry out their wishes and pleasure.

Bashfulness is a disease.—Bashfulness is a disease, to be diagnosed as carefully as any other malady. It arises largely from lack of nerve power.

Magic formula.—Recently we were quite fortunate in securing the famous formula of one of the leading physicians of America. Sufferers from bashfulness have the extreme good fortune of being able to avail themselves of this wonder medicine without spending a great amount of money. This preparation is called Schuy-Tone.

Schuy-Tone nourishes and replenishes the vital fluids in the system. No more misery because of bashfulness, blushing, stammering, or lack of confidence and poise.

Bashfulness blights lives.—Those of you whose lives have been blighted by the torments of bashfulness and lack of confidence can now receive blessed relief by using Schuy-Tone. This famous preparation has been used privately for many years with astounding good results. It is not a dope or a stimulant, but a nerve food to build up confidence and courage.

If you are now suffering from nervousness, nervous headache, indigestion, lack of confidence, bad temper, lack of "pep", sleeplessness, neuritis, high blood pressure, low blood pressure, poor memory, constipation, irregular heart, worry, neurasthenia, bashfulness, melancholia, fear of insanity—you should read every word of this letter.

No more need you worry because of weak, trembling, or painful nerves. Enjoy perfect health and steady nerves. Be free from any pain or strain—all your old restlessness and anxiety gone. Don't be discouraged—cheer up. We can help you, just as we have helped thousands of other people who were suffering with their "nerves."

We live and work in a busy age, and as a result over 90 percent of the people have acquired some nervous affliction.

Recently we had the good fortune of securing the formula of a famous nerve remedy used privately with astounding results by one of the leading physicians in America. This wonderful preparation is known as Schuy-Tone. It relaxes, rests, and nourishes tired, worn-out, and painful nerves. Schuy-Tone will help you regain your old strength and restore your nerves to their natural calm.

A nervous condition must never be neglected.—The most serious maladies usually come from nerve strain. No time should be wasted in correcting nerve exhaustion. You cannot expect to enjoy life to the fullest unless you have strong, healthy nerves.

Try Schuy-Tone on our responsibility.—Convince yourself as to the merits of this wonderful remedy. Schuy-Tone goes to the root of the trouble. It supplies the elements nature must have to keep your body in good working condition. Schuy-Tone will restore your nervous system to a healthy condition, so that you may eat, sleep, and be contented. Your work will be a keen enjoyment instead of a drudgery.

* * * As an introductory offer, we are going to send you a large, full-size, 1 month's treatment for only \$3. (Regular price, \$5.) You save \$2 by ordering now.

For healthy nerves, calmness, refreshing sleep, freedom from worry, control of the emotions, perfect digestion, lack of fatigue, lack of confidence, pains, Schuy-Tone leads the way.

Schuy-Tone for healthy nerves.—Everyone wants to have strong, quiet, calm nerves. People who are constantly "on edge", who become rattled and confused easily, never get much fun out of life.

To meet the many problems that arise daily, one must have poise and confidence and freedom from worry about your health and nerves. Healthy nerves carry us through difficulties with a minimum of worry.

Overtaxed nerves invariably are the cause of people becoming irritable, cranky—constantly "flying off the handle." Worn, tired nerves are certain to "give in" under such a strain.

Neglect is dangerous.—Very often headaches, indigestion, and pains are caused by the lowering of our nerve forces due to the slightest extra strain. A

neglected nervous condition results in neuritis, neurasthenia, and a weakening of physical and mental powers, followed eventually by a complete nervous breakdown.

Nervous people become so sensitive and unreasonable in their demands that they make everybody else with whom they come in contact just as miserable as themselves.

If you want to be master of yourself and your surroundings you must first have a healthy, vigorous nervous system.

Nerve power means happiness.—Have you not often observed that the men and women of power command every situation—how they are looked up to and respected? Others are glad to obey and carry out their wishes and pleasures. Nerve power means freedom from poor health, which is essential for success and happiness.

Restful sleep.—People suffering from “nerves” cannot get a good night's sleep. Sleeplessness is extremely dangerous. Lack of sleep makes matters worse, and as time goes on serious complications usually set in.

Magic formula.—Recently we were quite fortunate in securing the famous nerve remedy formula of one of the leading physicians in America. Sufferers from nerve exhaustion have the extreme good fortune of being able to avail themselves of this wonder nerve medicine without spending a great deal of money. This preparation is called “Schuy-Tone.”

Schuy-Tone contains only the purest ingredients—no drugs or opiates. Only extracts from nature's plant life. This remedy feeds the nervous system and promotes a quiet mind and a restful sleep.

Schuy-Tone nourishes and replenishes the vital fluids in the nervous system. Tired, worn-out nerves become strong and healthy—bad temper and irritability disappear and in their place we have peace and calm. No more misery because of nerve starvation.

Wives whose lives have been blighted by tormenting children and constant strain of household duties can now receive blessed relief by using Schuy-Tone. Husbands who suffer from nerve exhaustion because of constant worry, overwork, and intense concentration will find Schuy-Tone a remarkable remedy. Once again their nerves will be rested and strengthened. This famous preparation has been used privately for many years with astounding results. It is not a dope or stimulant that tends to wear out and exhaust the nervous system—but a nerve food.

A nervous break-down can be avoided.—The wise man and woman at the first indication of a nervous trouble immediately takes steps to build up and strengthen their weakening nerves.

Beware of sick nerves.—Nerves need food as well as rest. Ordinary diet is not enough. Specially prepared extracts as contained in Schuy-Tone are necessary to properly tone up and restore the nerves to a normal condition. Schuy-Tone is recommended to all people who wish to keep fit and trim at all times.

Exhaustion, nervousness, poor health overcome by Schuy-Tone.—Schuy-Tone attacks nerve exhaustion by striking at the cause. If you tire easily, feel “all dragged out”, can't go through your daily work without resting, there is only one reason for your troubles. You have not been supplying your nerves with the necessary essentials. An engine cannot work without fuel. Don't expect your nerves to do the impossible. People actually take more trouble in caring for their pets, automobiles, and gardens than they take in providing the necessary minerals and essentials of which we are made. We are constantly “using up” energy and strength. Is it not correct, then, to expect that we must replace this material or suffer by reason of this deficiency? Schuy-Tone

contains the necessary minerals and elements necessary to maintain your nerves in a normal condition. That is why the testimonial letters below are typical of how Schuy-Tone users have taken a new lease on life.

The Federal Trade Commission, from an investigation made, has reason to believe that certain of the foregoing statements are incorrect, exaggerated, and misleading to the injury of the public and of competitors, having the capacity and tendency to cause erroneous impressions that the use of said Schuy-Tone will accomplish in all cases the results set out or indicated therein; whereas the medical advice received by the Commission is to the effect that, although this preparation has tonic properties, neither this nor any other known medicinal preparation is an adequate treatment or an effective remedy for bashfulness, shyness, stammering, or similar conditions, or for the development of self-confidence, poise, courage, personality, or magnetism, as represented.

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 such 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; and in particular that the claims will be limited to the recognized tonic properties of said medicine.

It is also stipulated and agreed that if the said George Schwager 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. (Mar. 6, 1934.)

0609. **Publisher—Feminine Hygiene Preparations.**—The publisher of a photoplay magazine of large national circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of female hygiene preparations.

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 he has notice. (Mar. 6, 1934.)

0610. Publisher—Flesh and Weight Reducing Tablets.—The publisher of a story magazine of national circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of flesh- and weight-reducing 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 he has notice. (Mar. 9, 1934.)

0611. Publisher—Cement for use in repairing dishes, utensils, etc.—The publisher of a household magazine of large national circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a cement for use in repairing dishes, utensils, 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 he has notice. (Mar. 9, 1934.)

0612. Publisher—New Deal Price Tags for Show Windows.—The publisher of a trade magazine serving direct sellers, 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 "new deal" price tags for show windows.

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 he has notice. (Mar. 16, 1934.)

0613. **Publishers—Feminine Hygiene Preparations.**—The publisher of a seaside 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 feminine hygiene preparations.

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 he has notice. (Mar. 16, 1934.)

0614. **Publisher—Rheumatism Treatment.**—The publisher of a Pacific coast daily newspaper of large circulation in the Northwest printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an alleged treatment for rheumatism, 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 he has notice. (Mar. 16, 1934.)

0615. **Publisher—Windshield Cleaner.**—The publisher of a trade magazine serving direct sellers, of wide interstate circulation, printed, published and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufac-

turer and vendor of liquid to prevent frost and rain adhering to auto windshield.

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 he has notice. (Mar. 16, 1934.)

0616. **Publisher—Medicated Chewing Gum.**—The publisher of a trade magazine serving direct sellers, 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 medicated chewing gum alleged to aid digestion.

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 he has notice. (Mar. 16, 1934.)

0617. **Publisher—Hair Dye.**—The publisher of a southern 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 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 he has notice. (Mar. 20, 1934.)

0618. Vendor-Advertiser—Flesh and Weight Reducer.—Life Savers, Inc., of Port Chester, N.Y., vendor-advertiser, is engaged in selling a confection designated "Life Savers", and in advertising represented:

Life Savers help you to lose weight.

The right sweet at the right time helps you lose weight faster.

The latest diabetic findings show that sugar is the best fire to burn away the body fats completely, safely.

Life Savers are my idea of the right sweet. They give you quickly assimilated fat-fighting sugar energy without fat-creating bulk.

Show me that you are really getting busy on this reducing program, by buying two (2) packages of genuine Life Savers.

Eat Life Savers and grow thin.

I guarantee that you can safely lose on an average of 15 pounds a month.

You need sugar to help burn up those body fats.

* * * late scientific researches have demonstrated that you lose weight faster and more safely when your reducing diet contains ample sugar.

Sugar helps you reduce.

Sugar is the one food element that most quickly and safely melts away body fats.

You lose weight faster by eating sugar.

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 Life Savers are an effective aid to reducing weight or removing fat.

(b) That sugar or Life Savers will burn up or melt away body fat.

(c) That sugar helps one to reduce

and all representations and statements equivalent or similar thereto in form or substance. (Mar. 20, 1934.)

0619. Vendor-Advertiser—Instructions in Raising Rabbits.—Monroe Green, successor to National Rabbit Institute of Arcadia, Calif., vendor-advertiser, is engaged in selling courses of instruction in raising and breeding rabbits, and in advertising represented:

Raise rabbits for profit—earn \$1,000 to \$5,000 a year * * * his proved successful methods show you quickly and easily how to make \$1 to \$3 every hour of spare time.

Advisory Board National Rabbit Institute * * *

Dr. Carroll G. Bull, B.S.M.D., Baltimore, Md.

Prof. A. Lawrence Dean, Blacksburg, Va.

but alleges that no such statements and representations have been made by either of the respondents through advertisements in various publications or otherwise subsequent to the year 1930.

The said statements and representations are held by the Commission to have the capacity and tendency to mislead and deceive the purchasing public into buying said courses of instruction in the erroneous belief that the same are true, but the respondent, Monroe Green, does not so agree and alleges that he has acted throughout in entirely good faith.

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 probable earnings of prospective students will be in excess of the average amount earned by competent rabbit raisers devoting their entire time to their said business under normal rabbit-raising conditions in normal times;

(b) That any person is a member of respondent's advisory board unless such person be actually engaged in advising respondent in regard to its course of instruction or unless such person shall have materially assisted in the preparation of said courses of instruction; and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Monroe Green 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. (Mar. 23, 1934.)

0620. **Publisher—Tonsillitis Treatment.**—The publisher of Grit—a newspaper of large national circulation published by the Grit Publishing Co., of Williamsport, Pa., printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a tonsillitis 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 or any stipulation or other agreement between the advertiser and the Commission of which he has notice. (Mar. 28, 1934.)

0621. **Vendor-Advertiser—Account books in blank form.**—Harry Gardewing, trading as J. H. Gardewing, Lawrence, Ind., vendor-advertiser, is engaged in selling printed account books designated "Gardewing's Simplified Bookkeeping Systems", and in advertising represented:

\$2 commission on every \$4.75 sale. Make up to \$10 a day extra, selling all merchants my Simplified Bookkeeping Book. Tenth successful season. Handle with any line. So simple, selling experience unnecessary. Commission paid on orders received direct, increasing your profits every year. Harry Gardewing, Lawrenceburg, Ind.

Make \$10 a day extra selling all merchants my Simplified Bookkeeping Book.

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 respondent will not make unmodified representations or claims of earnings of sales persons in excess of the average earnings of the active full-time sales persons of respondent achieved under normal conditions in the due course of respondent's business.

(b) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(c) That respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said respondent 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. (Mar. 28, 1934.)

0622. **Publisher—Laundry Fork.**—The publisher of Opportunity, a trade magazine serving direct sellers, 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 laundry fork.

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 he has notice. (Apr. 2, 1934.)

0623. **Publisher—Epilepsy Treatment.**—W. H. Gannett, Publisher, Inc., the publisher of *Comfort*, a family magazine of large 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 treatment for epilepsy, fits, 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 he has notice. (Apr. 2, 1934.)

0624. **Publisher—Skin Ointment.**—Mr. James M. Thompson, New Orleans, La., the publisher of the *New Orleans Item*, a daily newspaper of large circulation in the Southern States, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an ointment for skin disorders.

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 he has notice. (Apr. 2, 1934.)

0625. **Vendor-Advertiser—Price Tags.**—H. I. Laudi and F. S. Small, copartners, trading as New Deal Products Co., St. Louis, Mo., vendor-advertiser, are engaged in selling price tags for show windows, designated “New Deal Price Tags”, and in advertising represented:

BRAND NEW BUSINESS INVENTION

Up to 233% Profit Selling to Leading Merchants Throughout the U.S. Red
Hot National Success

A new deal. We mean it. We give the salesman all opportunity to become a genuinely exclusive distributor on his own efforts in a week's time, without investing a pile of money. A brand new product, now being featured in the show windows of the largest, finest department stores, foremost merchants in the country, as well as being irresistible to the smallest merchant. Modernizes every store—looks like a million dollars—actually makes the merchant money and selling like wildfire.

* * * wanted at once—men qualified to act as district managers—hundreds of territories open now * * * Possible for him to make \$150 a week out of it * * *

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 they have definitely discontinued the advertising of said commodity, and do 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.

Respondents stipulate and agree that in the event they decide to resume advertising again, such future advertising will be made to conform to the rulings of precedents established by the Federal Trade Commission; and in particular that they will not represent or hold out as a chance or an opportunity for salespersons to earn, 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.

It is also stipulated and agreed that if the said H. I. Laudi and/or F. S. Small 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 them in the trial of the complaint which the Commission may issue. (Apr. 6, 1934.)

0626. **Publisher—Needlecraft Materials.**—W. H. Gannett, Publisher, Inc., the publisher of “Comfort”, 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 materials for needle craft and sewing.

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. (Apr. 6, 1934.)

0627. **Vendor-Advertiser—Gasoline Device.**—B. E. Colburn and R. E. Sager, copartners trading as Sterling Products Co., Green Bay, Wis., vendor-advertiser, are engaged in selling a device for vaporizing gasoline designated as "Gas-O-Fyer", and in advertising represented:

"GOLD" STOP! ACT QUICK!

Men, we have the most amazing invention to start automobiles in zero weather. It will marvel the auto world. We'll put this miracle invention on your car at our cost. See what it is. Read all about it. Get ready to make \$500 a month. No competition. Write quick. Sample postpaid, \$2; money back guarantee.

STERLING PRODUCTS CO.

Member N.R.A.

Green Bay, Wis.

and in follow-up literature:

The Gas-O-Fyer eliminates all of this trouble by supplying heat that is necessary to vaporize gas in zero weather to give your motor a ready explosive mixture. The reason why your car starts so easily in the summertime is because your motor is always within a temperature from 70 to 80 degrees Fahrenheit, which is sufficient to vaporize gasoline.

* * * * *
The Gas-O-Fyer has been tested and tried for several years and has proved practical in every respect, its principal and operation is based on sound common sense.

* * * * *
By placing the Gas-O-Fyer in between the carburetor and the air cleaner and confining the heat discharged from the Gas-O-Fyer in this air chamber produces a temperature of between 200 and 276 degrees Fahrenheit. This is accomplished by simply pushing a button on the dashboard, which automatically connects up and heats the element in the Gas-O-Fyer, which in turn heats the air to the above temperature. The reason for 60 second starting in the coldest weather.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions in that tests made by the Bureau of Standards show that the capacity and the efficiency of the device are greatly misrepresented, and that the claims of profits to be made by dealers

in this commodity are greatly exaggerated and admittedly without foundation of fact.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and respondents represent that they have definitely discontinued the business of selling said Gas-O-Fyer in interstate commerce, and have discontinued the advertising thereof, and do 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. Respondents further stipulate and agree that in the event they decide 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:

(a) Any claims as to the performance of said device will be limited to the scientific proofs thereof; and

(b) That respondents will not represent or hold out as a chance or an opportunity to the prospective salespersons any amount in excess of what has actually been accomplished by one or more of their salespersons under normal conditions in the due course of respondent's business.

It is also stipulated and agreed that if the said B. E. Colburn and/or R. E. Sagor 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 them in the trial of the complaint which the Commission may issue. (Apr. 9, 1934.)

0628. **Publisher—Tropic Weld.**—Opportunity Publishing Co. of Chicago, Ill., the publisher of Opportunity, a trade magazine serving direct sellers, 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 Tropic Weld.

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. (Apr. 9, 1934.)

0629. **Publisher—Deodorant.**—Opportunity Publishing Co. of Chicago, Ill., the publisher of "Opportunity", a trade magazine serving direct sellers of wide interstate circulation, printed, published and

circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacture and vendor of a deodorant.

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. (Apr. 9, 1934.)

0630. **Publisher—Feminine Hygiene Tablets.**—The publisher of a magazine of fiction 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 Amlo Tablets for female hygiene.

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 he has notice. (Apr. 11, 1934.)

0631. **Vendor-Advertiser—Feminine Hygiene Tablets.**—J. E. Leimback, trading as Amlo Products Co. of Chicago, Ill., vendor-advertiser, is engaged in selling tablets for feminine hygiene designated Amlo Tablets and in advertising represented:

This dainty tablet is all you need. Convenient and so simple to use. So dependably effective, yet totally safe and harmless. That is why modern, intelligent women prefer Amlo Tablets to safeguard their mental happiness and health. Dry, greaseless, noncaustic, nonpoisonous—a complete feminine germicide that requires no water, solutions, or accessories. Penetrating, soothing, deodorizing. Physicians recommend Amlo,

How to use Amlo Feminine Hygiene Tablets.

Not less than 3 minutes nor more than 60 minutes before, place an Amlo tablet as far back into the vagina as possible.

Allow the tablet to carry on its antiseptic action. Do not douche or wash the vagina immediately but wait, and when convenient cleanse with lukewarm water or mild antiseptic douches for utmost sanitation.

Amlo Tablets act immediately upon insertion, liberating a powerfully anti-septic gas which penetrates folds and crevices, quickly and surely destroying bacteria germs.

Amlo Tablets are nonpoisonous, noncaustic, odorless and harmless to delicate tissues. Repeated use will not desensitize membranes nor in any way irritate the vaginal tract.

It is the clean, easy, simple, and effective feminine hygiene method so highly appreciated by the modern, fastidious married woman.

Always make sure the vial of Amlo Tablets is tightly corked and kept in a dry place.

A NEW EASY WAY

Science which has literally done wonders for the modern woman in relieving her of the yoke of household toils has bestowed another significant aid. It has given her a new, simple, dainty method of feminine hygiene. One little snow white Amlo tablet supplants awkward, elaborate liquid solutions, cones and jellies. Nonpoisonous, noncaustic and odorless, Amlo Tablets require no water nor accessories. They dissolve instantly upon contact with moisture, efficiently destroying bacteria germs without injuring delicate tissues. Continuous use actually soothes and heals membranes and will correct conditions of leucorrhoea (known as "whites").

Enlightenment in the practice of feminine hygiene is gaining headway, thanks to the progress of antiseptics and the modern trend toward frankness on all formerly "taboo" subjects. Today there is no need for any married woman to be without positive information in the proper technique of personal hygiene. She need not be dependent upon her friends', her bridge partners', nor her neighbors' advice. She should accept only the actual facts of medical research.

The Federal Trade Commission from an investigation made has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading to the injury of the public and of competitors in that it is the evident intent to make the reader believe that such tablets are intended as a contraceptive and constitute a dependable germicide as well as an effective treatment for other conditions named; whereas the medical advice received by the Commission is that this product depends for its antiseptic action upon a compound which will decompose in the presence of weak acids to liberate chlorine; that the bactericidal efficiency of chlorine-liberating preparations is markedly decreased or even entirely dissipated in the presence of organic matter, leaving an insufficient concentration of it to be effective either as a germicide or as a contraceptive; and furthermore that such product would not destroy all bacteria germs, heal membranes, or correct conditions of leucorrhoea.

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) Either directly or inferentially that Amlo Tablets may be used as a contraceptive;

(b) That said tablet is "all you need", or "is so dependably effective", or will "safeguard your mental happiness", or that it is a "complete feminine germicide";

(c) That the placing of an Amlo Tablet in the vagina from 3 to 60 minutes "before" will cause liberation of a "powerfully anti-septic gas which penetrates folds and crevices, quickly and surely destroying bacteria germs";

(d) That one little Amlo Tablet "supplants awkward, elaborate liquid solutions, cones, and jellies";

(e) That said tablets "efficiently destroy bacteria germs" or heal membranes or correct conditions of leucorrhea;

(f) That the assertions made for this product are "the actual facts of medical research";

and all representations of like import.

It is also stipulated and agreed that if the said J. E. Leimback 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. (Apr. 11, 1934.)

0632. Vendor-Advertiser—Hair Dye.—Walgreen Co., an Illinois corporation operating Walgreen Drug Stores, Chicago, Ill., vendor-advertiser, is engaged in selling a preparation for coloring hair, designated "Nu-Color", and in advertising represented:

NU-COLOR HAIR-COLOR RESTORER

Convenient comb for applying Nu-Color comes attached to screw-top of the bottle.

\$1 bottle, full 12 ounces, 89 cents

Nu-Color is not a dye but a scientific preparation intended to restore the natural color to faded or gray hair. Brings back the natural color of the hair gradually through continued use. Easy to apply.

Nu-Color hair-color restorer, 12-ounce bottle, 89 cents

Comb for applying comes attached to bottle cap. Restores natural color to faded or gray hair. Darkens hair gradually through continued use.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, in that the medical advice received by the Commission is to the effect that there is no drug or chemical or any known combination thereof which will restore the natural color of the hair, gradually or otherwise; and in particular that the ingredients contained in respondent's formula will not do so.

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 product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That Nu-Color is a hair-color restorer; or

(b) That said preparation will either restore the natural color to faded or gray hair, or will bring back the natural color of the hair gradually or otherwise;

(c) That it does or can do any more than impart color to the hair;

and any other statements and representations of like import.

It is also stipulated and agreed that if the said Walgreen Co., a corporation, 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. (Apr. 11, 1934.)

0633. **Publisher—Hair Dye.**—Illinois Publishing & Printing Co., of Chicago, Ill., the publisher of the Chicago Herald Examiner, 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 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. (Apr. 12, 1934.)

0634. **Advertising Agency—Liquid Deodorant.**—Mortimer Lowell, operating an advertising agency under the trade name of Mortimer Lowell Co., New York, N.Y., prepared and caused to be published and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a liquid deodorant.

A stipulation has been filed with the Federal Trade Commission which has been approved, in which it is agreed:

That the advertising agent caused the advertisement of said advertiser to be inserted and published in various magazines and periodicals of general circulation throughout the United States;

That the advertising agent has discontinued placing advertisements for said advertiser;

That the advertising agent, should he hereafter be retained to handle the advertising of said advertiser, hereby agrees to observe and abide by the terms and provisions of any cease-and-desist order based on the aforesaid charges which may hereafter be issued by the Federal Trade Commission; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the aforesaid advertiser and the Federal Trade Commission in this matter of which the advertising agent has notice. (Apr. 13, 1934.)

0635. **Vendor-Advertiser—Greeting and Christmas Cards.**—H. Alperin, trading as Cyphers Card Co., Buffalo, N.Y., vendor-advertiser, is engaged in selling greeting, holiday, and event cards and in advertising represented:

Sell Cyphers personal Christmas greeting cards from now until Christmas. Up to \$100 or more a week; \$5 to \$10 an hour.

\$5 to \$10 per hour—up to \$1,000 or more before Christmas.

Anyone can earn a splendid income on our plan; experience unnecessary.

* * * when we say you can make \$1,000, \$2,000, or more in 3 or 4 months selling personal Christmas cards, that is exactly what we mean! Many greeting-card representatives do. \$5 to \$10 an hour, up to \$100 a week! You make 33½ percent on every order, and you get your pay right away.

It all depends on you—every dollar you earn, you get. The representatives who throw all their energy into the work and know where to go to get the big orders are the ones who make the big money. We also have many friends who haven't the time nor inclination to sell greeting cards day in and day out—they're content to earn \$75, \$100, \$200, \$500 or more, taking orders for Cyphers personal Christmas greeting cards in spare hours. And what more ideal way could there be to earn "pin money"?

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading in that the amounts stated exceed that which can be earned by agents or salespersons of respondent under normal conditions.

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 respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings

of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business;

(c) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business; and

(d) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Apr. 13, 1934.)

0636. Vendor-Advertiser—Skin Treatment.—Mills Chemical Co. of Girard, Kans., vendor-advertiser, is engaged in selling a treatment for various skin disorders, designated "Cranolene", and in advertising represented:

ECZEMA

Is Only Skin Deep, and May Be Instantly Relieved

and quickly healed by the use of Cranolene, the cranberry treatment for stubborn skin diseases. You pay only if you can say you are cured. Write today. Address Cranolene, Dept. C, Girard, Kans.

Eczema sufferers find instant relief and quick healing power in Cranolene, the cranberry treatment for stubborn skin diseases.

Stubborn Skin Irritations Healed with Cranberries

If you are discouraged through failure to get relief from itching eczema ask your druggist for a jar of Cranolene, the cranberry-cream treatment.

You have 399 chances to get rid of your eczema at a cost of only \$2.50 to 1 chance that it will fail, and in that event you get your money back in full.

Stubborn Skin Irritations Healed

The mild acid juice found in cranberries seems to kill the tiny skin parasite which is the direct cause of eczema and most skin irritations. With the cause removed the healing takes place quickly. Cranolene healing cream, used externally, is based on this discovery. In this cream the cranberry juices have been

combined with soothing, cooling, healing oils. Instantly stops the itching and speedily restores the skin to natural health and color.

I am proud to say that ever since I used Cranolene healing cream for eczema in 1918 I have not been bothered with that trouble. Cranolene cured me.

I suffered with eczema under the knee and on both legs between the knee and hip for more than 30 years. I commenced to use Cranolene and the itching was relieved within 2 days after starting it. Cranolene has done wonders for me; I am cured.

For the past 9 years I have had one of the worst cases of eczema one could possibly have on my hands and feet * * * Now I thank God and Cranolene for being cured, and I can truthfully say that yours is the most wonderful treatment on the market for eczema. All one needs to do is to give it a fair trial and results will be a sure cure.

About 10 years ago my mother was bothered with the eczema. It was the worst form of eczema, too. She has spent more than \$75 with the doctors, but it did not get any better. She saw your advertisement one day, and answered it. Received the treatment promptly, and has not seen a sign of the trouble since that time—10 years ago.

I cannot recommend your wonderful Cranolene treatment too highly as it cured me of eczema after I had suffered wretchedly for 12 years.

You have long sought a cure for eczema—something to relieve you of the awful agony—and failed. In this paper we print letters from those who have found the right answer.

While there are both internal and external causes for what is called eczema, the preponderance of medical authority agree that it is only skin deep.

Cranolene is scientifically compounded under the very best laboratory conditions. Its active agent is the powerful acid extracted from the table cranberry. These berries are of the choicest variety, selected with great care for our particular use. To these germ-destroying acids, which are perfectly harmless to the human skin, are added such old and time-tried healing agencies as oil of wintergreen, camphor gum, and others of our own laboratory development.

Cranolene, through those powerful acids, attacks the tiny skin parasite that is the direct cause of 90 percent of all skin diseases, and seems to destroy. With this parasite destroyed, the cause is removed and the poison is drawn from the skin by the action of the ointment. The healing then takes place rapidly under the soothing influence of the curative ingredients of Cranolene.

Cranolene does not cover up the sore places until after the poison has been drawn from the skin. These poisons must be drawn out before the sick skin can be cured permanently. If the outer skin is healed over before the poisons are drawn out, then you may expect a return of your trouble in a more malignant form than before. Once the skin is thoroughly cleansed of this poison, then the complete cure should be effected quickly and in most cases permanently.

* * * we have yet to find a genuine case of eczema that Cranolene will not heal, if our simple directions are followed. We have letters from thousands of people who declare that Cranolene healing cream has cured their eczema after all other remedies had failed.

His cranberry poultice cured him of the dread erysipelas and the eczema and he lived a busy, useful life for more than 10 years after this experience.

My baby had eczema, and one jar of your ointment cured him.

Cranolene—the cranberry cream, derives its great virtue from an acidlike juice extracted from the inner skin of the humble cranberry.

* * * it is an external remedy for the treatment of eczema and allied eruptive derangements. It is even told that, applied to cancerous ulcers, it is remarkably healing. * * * The acid destroys the germ to which the eruption is due, and at the same time it cleanses the diseased surface. * * * President Grover Cleveland, when spending a summer on Cape Cod, broke out with an eruption like the sting of nettles, and was cured overnight by applying cranberry juice.

I am glad to say that I am well of eczema, after 8 years of suffering. Your Cranolene has cured my hand, and I sing the praises of Cranolene to my friends on every occasion.

My mother used it for eczema a long time ago, and it cured her.

I used Cranolene cream for eczema, applying it in the regular way, and soon was entirely rid of the trouble.

I suffered with eczema for 11 years on my hands and feet. I used Cranolene and it cured me of that dreadful disease.

He used a single jar of Cranolene healing ointment. * * * After 10 days of use the whole trouble disappeared, and I have never felt the slightest return since. Believe me when I say Cranolene sure does cure the piles.

I suffered with eczema for 20 years, during which time I paid out a lot of money and used everything I could hear of. Two jars of Cranolene completely cured me.

I had eczema on my body from my head to my feet, and Cranolene completely cured me.

I had a terrible case of eczema, covering my entire body from the crown of my head to the soles of my feet; in my ears, eyes, and nostrils. I had this malady for 12 years. Cranolene cured the eczema and changed the skin from an inflamed red color to a clean, natural white.

I cured a case of eczema with Cranolene which could not even be relieved by other ointments on the market.

I suffered with eczema for 23 years on my feet, then it got into my face, my ears, and the corner of my eye. I used one box of Cranolene, and it did the work.

Cranolene has cured me sound and well. I can't say enough in praise of your treatment. * * * No one can know what I suffered during the 35 years I had eczema, but since using Cranolene no signs of the disease have ever returned to me.

Cranolene * * * has entirely cured me of eczema.

Cranolene—the cranberry healing cream. Indians used the juice of the fresh cranberry to heal skin troubles.

Cranolene Healing Cream

[Made from cranberries]

It has been discovered that the mild, acidlike juice found under the skin of common table cranberries kills the tiny skin parasite that is the cause of eczema and similar skin troubles. The cause removed, the healing takes place quickly and the skin is restored to its natural color and health.

I am most grateful for the Cranolene treatment. * * * It is a sure cure.

Cranolene cured me of eczema, and I had the disease for 25 years. It also cured my little 18-month old daughter of the same trouble. It did for us what no other treatment would do—cured us to stay cured.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exag-

gerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions that the use of said Cranolene will accomplish in all cases the results set out or indicated therein; whereas the medical advice received by the Commission is to the effect that, although this preparation may afford relief from some of the common skin irritations, it is neither an adequate remedy nor a competent treatment for any of the many and various forms of eczema and allied diseases, some of which appear to be caused by nervous disturbance, some by certain toxins circulating in the blood, and some by various local irritants; that no scientific proof has been offered that this preparation is either an antiseptic or a germicide, and that even if it is, it would not come into contact with the particular germs causing the disturbance; and that the active ingredients of this product are methyl salicylate and powdered camphor, the cranberry extract being incidental, so that this is not in fact a "cranberry treatment", as advertised.

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 stipulated, 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 eczema is only skin deep;
- (b) That eczema may be healed by the use of Cranolene;
- (c) That Cranolene is a cranberry treatment;
- (d) That a jar of Cranolene will rid a person of eczema in 399 cases out of 400, or in any other proportion of cases not supported by medical evidence;
- (e) That the juice of cranberries kills the skin parasite which is the direct cause of eczema and most skin irritations;
- (f) That Cranolene cures eczema;
- (g) That the preponderance of medical authority agree that eczema is only skin deep;
- (h) That the active agent of Cranolene is the powerful acid extracted from the table cranberry;
- (i) That a tiny skin parasite is the direct cause of 90 percent of all skin diseases, or of any other percentage of such afflictions not supported by medical evidence;
- (j) That Cranolene attacks and destroys the parasitic cause of 90 percent of all skin diseases, or draws the poison from the skin;
- (k) That Cranolene having cleansed the skin thoroughly of all poison, quickly effects a permanent cure of the affliction;

(l) That no genuine case of eczema has yet been found which Cranolene will not heal; or that Cranolene has cured thousands of cases of eczema after all other remedies have failed; or in fact that it has ever cured any cases of eczema whatsoever;

(m) That a cranberry poultice can cure either erysipelas or eczema;

(n) That Cranolene derives its great virtue from the acidlike juice of the cranberry;

(o) That Cranolene is remarkably healing when applied to cancerous ulcers;

(p) That the cranberry acid destroys the germ to which a skin eruption is due; or that President Cleveland was cured of a skin eruption overnight by applying cranberry juice;

(q) That Cranolene cures piles;

(r) That Indians used the juice of fresh cranberry to heal skin troubles;

(s) That Cranolene is the only treatment that will cure eczema to stay cured;

(t) That Cranolene is a competent treatment for eczema or stubborn skin diseases;

and all representations of like import.

It is also stipulated and agreed that if the said Mills Chemical 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. (Apr. 16, 1934.)

0637. Vendor-Advertiser and Advertising Agency—Duplicating Machines and Supplies.—Perry I. Wolf, trading as Wolf Duplicator Co. of New Castle, Ind., and Shaffer Brennan Advertising Co., of St. Louis, Mo., engaged in selling duplicators and supplies through agents and advertising for agents represented in advertising:

Give this amazing duplicator outfit free to every church.

Earn up to \$100 weekly.

Make up to \$54 on each call.

Clergymen everywhere grasp this tremendous "no cost" offer.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser and advertising company 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 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' sales persons 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' sales persons under normal conditions in the due course of respondents' business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondents 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 them in the trial of the complaint which the Commission may issue. (Apr. 16, 1934.)

0638. Vendor-Advertiser—Herb Compound.—Germania Tea Co. of Minneapolis, Minn., vendor-advertiser, is engaged in selling an herb compound designated as "Germania tea", and in advertising represented:

How I lost 62 pounds ugly fat in 3 months without harmful dieting * * * simply drank delicious Germania herb tea with meals—fat dropped off like magic.

One delicious cupful of Germania herb tea, obtainable at drug and food stores, which I drank with each of my meals, I hold responsible for the loss of all my ugly fat * * *.

But getting rid of 62 pounds of fat cannot be accomplished by drinking any ordinary tea. Remember you must drink Germania herb tea.

Now you can easily and quickly get rid of excess unhealthy fat with utter safety and keep the face free from the wrinkles and haggard looks that freak dieting produces.

No freak dieting and no exercising.

* * * regain youthlike strength and energy, feel better than you have in years, and at the same time lose from 2 to 6 pounds of fat a week.

Reduce with Germania herb tea.

Reducing herb teas.

Reduce your surplus flesh.

Remove it in a safe, harmless and natural way by drinking Germania herb tea. * * * positive in results—no dieting necessary.

* * * no more unnatural fat can accumulate.

* * * it builds your strength at the same time it reduces you.

Proper elimination and satisfactory weight. Germania herb tea.

I was very sick and doctors told me I had Bright's disease and appendicitis. My feet and legs were swollen and I suffered with terrible pains across my kidneys * * * I can truthfully say I think Germania tea saved my life.

I gave Germania tea to my little girl and boy for eczema. It has entirely cured them. It is a wonderful blood purifier.

Germania tea not only reduces but leaves you in a healthy condition.

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 herb compound is of itself a competent treatment for obesity;

(b) That the use of said herb compound has caused or will cause a person to lose a definite amount of weight within a definite time;

(c) That the use of said herb compound has caused or will cause fat to drop off like magic;

(d) That a reduction in weight may be accomplished by the use of said herb compound without dieting or exercise;

(e) That any reduction in weight experienced by any person was due entirely to the use of said herb compound;

(f) That the use of said herb compound will produce satisfactory weight;

(g) That said herb compound is positive in results;

(h) That the use of said herb compound alone will leave one in a healthy condition or increase one's strength or energy;

(i) That said herb compound is a blood purifier or a competent treatment for Bright's disease, appendicitis, or eczema;

(j) That the use of said herb compound will be effective in the treatment of any ailment or pathological condition, unless such representation is 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; and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Germania Tea 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. (Apr. 16, 1934.)

0639. Vendor-Advertiser—Gas Tank Cap Lock.—E. F. Newburg, operating as New-Lox Manufacturing Co., Rockford, Ill., vendor-advertiser, is engaged in selling a gas tank cap lock through agents and in advertising represented:

New gas tank cap lock. Pays up to \$12 a day. New-Lox sells on sight.

Make real money—up to \$15 or \$20 every day. Our agents make up to \$90 weekly.

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:

(a) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business;

(b) That respondent 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 respondent's salespersons under normal conditions in the due course of respondent's business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondent 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. (Apr. 16, 1934.)

0640. Vendor-Advertiser—Automobile Windshield Preparation.—A. C. Wendelken, trading as Jiffy Specialty Co., of Marietta, Ohio, vendor-advertiser, is engaged in selling a preparation for use on automobile windshields designated "Jiffy Liquid Windshield Raindrop Preventer", and in advertising represented:

AUTOMOBILISTS, BUY RAINDROP, SNOW, AND SLEET PREVENTER

Liquid form, in convenient case, ready for use. Prevents raindrops from sticking to windshield in hardest storms. Makes windshield clear as crystal. Sell service stations. Amazing profits. Sells on sight. Sample 3 dimes.—Guaranteed.

Jiffy Specialty Co., Marietta, Ohio.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing descriptions of this preparation as a snow and sleet preventer are incorrect and misleading to the injury of the public and of competitors, having a tendency to mislead and deceive prospective purchasers in that tests made by the Bureau

of Standards disclosed that under subfreezing conditions the material does not prevent the formation of ice on the glass, nor does it do away with the accumulation of snow and sleet on the windshield.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity as a snow and sleet preventer, and does not intend to resume such advertising in the future. Respondent stipulates and agrees that all future advertising of this product will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that such advertising will not directly or inferentially represent this commodity as either a snow preventer or a sleet preventer.

It is also stipulated and agreed that if the said A. C. Wendelken 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. (Apr. 16, 1934.)

0641. Advertising Agent—Cosmetics, Etc., by the Premium Puzzle Method.—The Anchor Advertising Co., Inc., of Cincinnati, Ohio, an advertising agent, prepared and placed for publication advertising copy alleged to contain false and misleading claims, statements, and representations for the Century Co., of Des Moines, Iowa.

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. (Apr. 20, 1934.)

0642. Advertising Agent—Hair Dye.—Corning, Inc., of St. Paul, Minn., an advertising agent, prepared and placed for publication advertising copy alleged to contain false and misleading claims, statements, and representations for Miss A. Wright, trading as Wright Manufacturing Co., of St. Paul, Minn.

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 she has notice. (Apr. 20, 1934.)

0643. **Publisher—Stomach Treatment.**—Arthur Capper, the publisher of a household magazine, a periodical 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 sea tone, a kelp preparation for stomach 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 he has notice. (Apr. 20, 1934.)

0644. **Publisher—Clothing, Furnishings, and General Merchandise.**—The Evening Star Newspaper Co., of Washington, 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 clothing, furnishings, and general merchandise.

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. (Apr. 20, 1934.)

0645. **Vendor-Advertiser—Metal Laundry Fork.**—Steel Materials Co., a corporation, trading as Sherman Sales Co., of Detroit, Mich., vendor-advertiser, is engaged in selling metal laundry forks through agents and in advertising represented:

Up to \$5 a day easy just for your spare time selling this new laundry fork. Full-time salesmen are cleaning up.

This new laundry fork sells on sight to housewives everywhere.

* * * rustproof.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, to the injury of the public and of legitimate competitors, having the capacity and tendency to cause erroneous impressions in that the amount stated exceeds that which can be earned by agents or salespersons of respondent under normal conditions, the demand for said laundry fork is exaggerated, and said laundry fork is not rustproof.

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 respondent 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 respondent's sales persons under normal conditions in the due course of respondent's business; and

(b) That in future advertising where a modifying 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.

(c) That respondent will not represent: (1) That said laundry fork sells on sight, or (2) that said laundry fork is rustproof.

It is also stipulated and agreed that if the said respondent 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. (Apr. 20, 1934.)

0646. Vendor-Advertiser—Herb Compound.—Charm Laboratories, of 521 Fifth Avenue, New York City, vendor-advertiser, is engaged in selling a medicinal herb compound designated as "Charm Tea", and in advertising represented:

Reduce with Charm Tea safely, sensibly, surely.

Unwanted fat disappears like magic without diet or special exercise; take Charm Tea daily to help the body function normally and remove waste tissues and improve your health.

This is another of a series of broadcasts sponsored by the Charm Laboratories.

* * * Valuable beauty hints by the noted authority on beauty, Miss Charm.

I want to tell you what to do if you are stout. Drink a cup of Charm Tea every day and reduce moisture weight.

I recommend Charm Tea to all stout women.

Charm Tea is the first beauty aid that every woman should turn to if she is stout.

* * * excess weight today can be overcome so easily with the help of a cup of Charm Tea every day.

* * * the Charm Tea reducing process is the safest and pleasantest process for eliminating excess weight.

You are not compelled to diet; just eat sensibly, and enjoy your meals. A cup of Charm Tea every day will reduce all the moisture weight just the same.

Drink a cup of Charm Tea every day, for this simple practice is valuable in the process of weight reduction.

We have with us a well-known beauty consultant, known as "Miss Charm."

* * * Your figure, for instance, if that is oversized, it is almost impossible to be nonchalant about that. However, for that particular trouble I recommend a cup of Charm Tea every day. This reduces moisture weight.

Just try it if you are fat, and you will be delighted with the result.

I know of nothing that is more helpful or beneficial in the process of weight reduction.

If your figure is bulky and overweight, you should take advantage of the advice she has just given you.

To every woman who is overweight I say—don't let this condition rob you of your chance to be lovely and confident of your charm. Drink a cup of Charm Tea every day.

Charm Tea reduces moisture weight.

It tones a sluggish system and prepares it for the loss of any amount of weight.

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 Charm Tea is of itself a competent treatment for obesity or excess weight.

(b) That the use of said Charm Tea alone will—

1. Cause one to reduce.
2. Cause fat to disappear.
3. Reduce moisture weight.
4. Produce a slender figure.

(c) That the use of Charm Tea is a sure way to reduce.

(d) That Charm Tea is recommended for all stout women.

(e) That Charm Tea will be effective in reducing weight without dieting.

(f) That nothing is more beneficial than Charm Tea in the process of weight reducing.

(g) That Charm Tea prepares the system for the loss of any amount of weight.

(h) That any person making statements regarding the use or effects of Charm Tea, or any person to whom such statements are attributed is an authority on beauty or a well-known beauty consultant, unless and until such person shall possess the qualifications and reputation indicated.

(i) That the use of Charm Tea in connection with any regimen prescribed by respondent will cause a reduction of weight in all cases, and all representations that statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees in soliciting the sale of and selling said Charm Tea to cease and desist from using the word, "laboratories", as a part of its trade name.

It is also stipulated and agreed that if the said Charm Laboratories, 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. (Apr. 20, 1934.)

0647. **Advertising Agent—Cheese Chips.**—Shaffer Brennan Advertising Co., of St. Louis, Mo., an advertising agent, prepared and placed for publication advertising copy alleged to contain false and misleading claims, statements, and representations for the Fluff-O-Manufacturing Co.

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. (Apr. 20, 1934.)

0648. **Vendor-Advertiser—Cheese Chips.**—The Fluff-O-Manufacturing Co., of St. Louis, Mo., vendor-advertiser, is engaged in selling Magic Cheese Chips through small-home makers and dealers and in advertising represented:

Magic Cheese Chips—Coast to coast success positive proof of up to \$60 to \$300 a week at home. * * * Positive proof of opportunity to make up to \$30

first day. Distributors now making high as \$60 to \$300 a week clear. Men—women starting at scratch, then ordering 50 to 200 pounds weekly—\$2 a pound profit. Biggest food novelty in years. Virgin territory everywhere. Hundreds of successful businesses now operating. Thousands of open territories. Immediate success possible everywhere.

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 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' sales persons 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' sales persons under normal conditions in the due course of respondents' business; and

(c) That in future advertising where a modifying 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.

It is also stipulated and agreed that if the said respondents 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 them in the trial of the complaint which the Commission may issue. (Apr. 20, 1934.)

0649. Vendor-Advertiser—Scalp Treatment.—The Health Appliance Corporation of New Haven, Conn., vendor-advertiser, is engaged in selling a scalp treatment consisting of a mechanical appliance designated as "Skalp-O-Lator" and a shampoo liquid designated as "Sebasolve", and in advertising represented:

Grow hair or no pay.

New hair grown in 4 months, falling hair stopped or no pay.

A tight scalp, the greatest cause of baldness, nervous headaches, etc., can be corrected with the Skalp-O-Lator.

A scientific means of restoring healthy condition and promoting growth of hair. Hair grown in 4 months, falling hair stopped or no pay.

Guaranteed to stop hair from falling out in 60 days, start new hair growing in 4 months.

You risk nothing and send us no money until results have been obtained.

If you are bald or just beginning to lose your hair you need a Skalp-O-Lator.

The Skalp-O-Lator raises the scalp and allows foods and nourishment to be carried to the hair roots.

A tight scalp is the real cause of baldness.

What the Skalp-O-Lator has accomplished in the above case it will do for you.

If you purchase a Skalp-O-Lator you will get the results you are after only if you use it as recommended.

We guarantee that use of Skalp-O-Lator and Sebasolve faithfully each day according to directions for a period of at least 5 months will start new hair growing on scalps from which hair has been lost, or will stop loss of hair where Skalp-O-Lator is being used to stop excessive loss of hair.

When you use Skalp-O-Lator diligently you will get results.

We guarantee that its gradual and persistent action will start hair growing in less than 5 months and that continued use will result in complete restoration.

With this scientific method there is no further reason for baldness unless the cause is due to condition of the blood.

Inside of a few short months—usually 4 months—hair begins to grow where there was no hair before.

Inside of a few more months, hair is even more abundant on previously bald heads.

Take the step now that means regaining the hair you once enjoyed.

We guarantee your success.

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 use of said treatment will grow hair.
- (b) That the use of said treatment will stop hair from falling out.
- (c) That a tight scalp is the greatest cause of baldness or the real cause of baldness.
- (d) That a person who is bald or who is beginning to lose his hair needs said treatment.
- (e) That the use of said treatment will cause the roots of the hair to be nourished.
- (f) That results obtained by others will be obtained by the prospective purchaser.
- (g) That results are guaranteed.
- (h) That there is no further reason for baldness, with said treatment available.

(i) That the purchaser risks nothing or that he is required to send no money, so long as payment of purchase price in escrow is required, and unless and until said treatment is sent without requiring that any money be paid to any one before trial. and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Health Appliance Corporation 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. (Apr. 23, 1934.)

SECURITIES DECISIONS¹

IN THE MATTER OF GOLD PRODUCERS, INC.

FINDINGS, OPINION, AND STOP ORDER IN PROCEEDING UNDER SEC. 8 (b) OF
THE ACT OF CONGRESS APPROVED MAY 27, 1933

File No. 2-416. Order, December 1, 1933

USE OF "FREE" ASSESSABLE STOCK PLAN TO RAISE CAPITAL—DISTINGUISHED
FROM SALE ON INSTALMENT PLAN.

The usual method of distributing "free" assessable stock as a means of raising capital is distinguished from the instalment selling of stock primarily by the fact that the stockholder is under no personal obligation to pay for the stock, inasmuch as nonpayment of the assessments results simply in forfeiture of his interest.

SECURITIES ACT OF 1933—"SALE" OR "OFFER TO SELL"—"FREE OFFER" OF
ASSESSABLE STOCK—WHETHER "GIFT".

An individual, president of a corporation, conveyed thereto in exchange for its entire authorized capital stock of 6,000,000 shares of stock, an option to purchase certain mining claims and real property. Under a subsequent agreement between the corporation and its vice president, the former also acquired an option to purchase certain other property in exchange for 1,200,000 shares of fully paid nonassessable stock, to be issued by said corporation as returned to it for nonpayment of assessments, or otherwise acquired, in which stock its president, above referred to, was to have an interest. Under a third transaction it acquired certain "gold interests" in exchange for a cash payment and an undertaking to make other payments. Said president, in pursuance of a plan to raise needed funds for the corporation, which was thus left without working capital for development or capital stock to sell directly to the public, announced to a large number of persons that they were to receive "free" stock certificates for 250 shares, each, together with the privilege of subscribing "free" for an additional 9,750 shares, each (or any part thereof), and thereafter accordingly sent said persons such certificates, together with blank agreements, under which the signer keeping the certificate agreed to pay no more than nine assessments of 2 cents per share on such stock, and to make similar payments upon such other shares as he should take under the rights extended as aforesaid, it being provided that not more than three assessments should be levied in any one year, and notice being given that a first assessment was to

¹As a matter of convenience there are included in this volume, herewith, four opinions and decisions in stop-order proceedings, handed down by the Commission during the period it administered the Securities Act of 1933, prior to the transfer thereof by the Securities Exchange Act of 1934, to the new Securities and Exchange Commission, effective Sept. 1, 1934.

An account of the Commission's work in dealing with the 1,095 statements filed for registration under the act, during such period, from July 7, 1933, to Sept. 1, 1934, and in otherwise administering the act, may be found in the Commission's Annual Report for 1934.

be levied on the first of the month following. The words "sale" or "offer to sell", are defined in section 2, paragraph (3) as including "every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value". *Held*, That, regardless of whether the prospective stockholders became obligated to the corporation, the transaction as between them and the president cannot be regarded otherwise than as a disposition of the stock for value, and as constituting a "sale" or "offer to sell" within the aforesaid language, irrespective of the enforceability of the obligation to pay assessments since an attempt to secure such an obligation, and thus to sell the stock, was made.

Mr. Richard P. Whiteley and *Mr. William Green* for the Commission.

Mr. C. D. Neilson and *Mr. Orman W. Ewing*, of Washington, D.C., for registrant.

FINDINGS AS TO THE FACTS

From the testimony of witnesses and from the evidence contained in the exhibits, the Commission finds as a fact that the registration statement of Gold Producers, Inc., heretofore filed and received in evidence as Commission's Exhibit No. 1, is incorrect and inaccurate in material respects as follows:

Answers are incomplete as given by registrant to the following questions: Numbers 3, 15, 17, 20, 30, 31, 32, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 50, 51, 54. Answers to the following questions are incorrect: 25, 28, 29, 34, 35, 36. Opinion of counsel and consent for its use were not furnished. Consent of Frank B. Maloney for use of the report given by him and used in the prospectus has not been furnished as required by Section 7 of the Act. The prospectus does not comply with Rules 16 and 17 of the Commission in that Item 7 in the prospectus does not agree with Item 28 of the registration statement, and Item 8 in the prospectus conflicts with Item 29 of the registration statement. Item 19 in the prospectus is not true if the stock transaction hereinafter mentioned is adjudged to constitute a sale.

Registrant's answer to Item 26 of the statement says that no money is to be raised by the issue of stock, but it is shown in the answer to Item 20 and in the letter of A. W. Lasher dated October 21, 1933, with accompanying blank shown in this exhibit, and by Lasher's circular letter of October 14, 1933, and elsewhere in the record, that the recipient of the alleged free stock is asked to sign and return an acceptance of the shares received and an agreement to pay not more than nine assessments of 2 cents each per share. The Lasher letter of October 14, 1933, says, "— You know to start with what the maximum amount your shares would cost you—would be 18 cents per share, provided it were necessary to

levy all nine assessments within the three-year period." Recipient is informed in the letter transmitting the stock and acceptance blank that a first assessment of 2 cents per share will be made on November 1. It also appears in the letter of October 14 that stock is forfeited if assessments are not paid. The par value of the stock appears by the statement and appended charter to be 10 cents per share.

OPINION OF THE COMMISSION

This is a proceeding under Section 8 (b) of the Securities Act of 1933 for the entry of an order refusing to permit the registration statement of the respondent to become effective until properly amended in accordance with the order.

The contention is that certain answers filed by the respondent to the questions set forth on Form A-1 are either incomplete or incorrect and that, further, Rules and Regulations of the Commission, promulgated under the Securities Act, have not been complied with. The findings of the Commission with reference to each of the contentions made by the counsel for the Commission are set forth above.

These findings are not generally contested by the respondent. The respondent's claim is limited to insisting upon the correctness of his statements in the registration statement and the prospectus which set forth certain transactions as constituting a gift of stock and not a sale. These transactions counsel for the Commission contend are incorrectly stated inasmuch as they are said to be a sale or offer to sell, as that term is defined by Section 2 (3) of the Securities Act of 1933.²

The determination of this question requires a brief recital of the respondent's plan of distributing its stock. The respondent is a Nevada corporation, incorporated on September 19, 1933, to engage in mining and all related ventures. Its officials consist of A. W. Lasher, president; F. M. Maloney, vice president; and L. M. Dixon, secretary and treasurer. These officials are also the directors of the respondent. The authorized capitalization of the respondent is 6,000,000 shares of assessable voting common stock of a par value of 10 cents. It is these 6,000,000 shares which are sought to be registered by the registration statement in question.

Prior to the incorporation of the respondent, on May 24, 1933, A. W. Lasher acquired from the Washington Blue Gravel Co. an exclusive right and option to purchase certain mining claims and real property in California. The purchase price of this property to Lasher was \$85,000, without interest, payable by means of a 15-

²A sale or offer to sell is defined by this subsection to include "every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value".

percent royalty on the "net gross mint returns" from the production of these mines, but subject to the condition that if the purchaser on July 1, 1935, was in possession of the property, he was to pay the Blue Gravel Company \$15,000 every six months until the full purchase price, without interest, was paid. Other covenants, not material to the issue here involved, were assumed by both parties.

On October 18, 1933, Lasher assigned all his rights, "benefits and obligations" under this agreement to the Gold Producers, Inc. The consideration for this assignment was the transfer to Lasher (then president of the respondent) of 6,000,000 shares of common stock of the respondent, being its total authorized stock. Strange as it may seem, this transaction, which resulted in the respondent acquiring merely an optional right in return for its total authorized stock of a par value of \$600,000, is said under Nevada law to have the effect of making these shares fully paid.

The method by which the respondent acquired its second asset also requires mention. On May 11, 1933, J. S. Cohen conveyed to C. R. Teter and F. McNulty the exclusive right, privilege and option to purchase certain mining property in Montana. The purchase price of this property was \$100,000, payable in five and ten thousand dollar instalments, the first of which becomes due on January 1, 1934. In addition, the grantee agreed to pay the grantor 15 percent of the net smelter returns from all orders produced in the mine, any payments derived from this source being applied to the purchase price. This option to purchase was acquired on October 7, 1933, by Maloney, vice president of the respondent,³ and was conveyed by him on the same day to the respondent. The respondent agreed to pay Maloney for this option 20 percent of the total stock of the respondent which was to be fully paid and nonassessable. This stock was "to be issued from treasury stock when and if stock actually is returned to treasury because of nonpayment of assessments or otherwise". The contract embodying this agreement is not set forth in the record. The 20 percent of stock payable to Maloney, amounting to 1,200,000 shares, seems not only to have been payable to Maloney but also to Lasher, who is to have an interest in these shares.⁴

³An overriding royalty of 7½ percent of the net smelter or mill returns was promised to Teter and his associates as consideration for the assignment of the option to Maloney.

⁴In Item 21 of the Prospectus, the 1,200,000 shares are said to be payable to Maloney "to be divided among the promoters for their worked (sic) in acquiring property and organizing the company". In Items 28, 43, and 53 of the registration statement, these shares are said to be payable to Lasher and Maloney as promoters. In the balance sheet these are stated as being payable to "F. M. Maloney, et al." The uncertain character of this obligation is demonstrated by a statement in Lasher's letter of October 14, 1933, to prospective stockholders: "I am turning the Washington property over to Gold Producers, Inc., for capital stock of the company, out of which myself and associates will retain 20 percent for ourselves." It was the Montana and not the Washington property which was supposed to have been conveyed to the company for this 20 percent of the capital stock.

A third asset of the respondent may also be noticed. It was the only asset that was apparently derived other than from an officer of the respondent. This consisted of 12,500 "Grainger Gold Interests" of the par value of \$1 each, which were conveyed directly to the respondent by Ben C. Grainger trading as Grainger Gold Interests. The purchase price was \$2,000 payable \$650 down and the balance in two instalments of \$675. These interests consisted each of an undivided 1/80,000 the ownership interest in certain unpatented mining claims still in the development state.

The result of these conveyances to the respondent left the company with neither working capital to develop the property nor capital stock to sell directly to the public. Working capital, as well as such other capital as was needed to defray expenses upon the contracts mentioned, was instead to be raised by distributing the common stock and then levying assessments against it.

In pursuance of this scheme, on October 7, 1933, Lasher sent a letter to some 24,000 persons intimating that something of great value in the way of gold mining participations was in store for them. A week later a second letter followed. This told of how each of these persons was to receive "free" a stock certificate for 250 shares with the privilege of subscribing "freely" for an additional 9,750 shares or any part thereof. They were advised, however, that the stock was assessable to a limit of nine assessments of 2 cents each, no more than three of which were to be levied in any one year. Thus for a maximum of 18 cents (provided that the limit of nine assessments was legally enforceable) purchasers could acquire, immune from forfeiture for the nonpayment of assessments, stock of the par value of 10 cents.

On October 21, 1933, the stock certificates for 250 shares were actually mailed to the prospects together with a printed slip which they were asked to sign, whether they rejected or accepted these certificates and also if they subscribed for any portion of 9,750 shares stated to be held for them. By signing this printed slip the prospect agreed to the following conditions: "I hereby *accept* and will make prompt payment of assessments on the 250 share certificate of *Gold Producers, Inc.*, just received. I understand that in *no event* will I be required to pay *more than nine* (9) assessments of 2 cents per share or a total of 18 cents per share and that no more than three (3) assessments of 2 cents each will be levied in any one calendar year. Under these conditions, I desire to exercise my *personal reservation privilege* by requesting that you immediately issue and mail me *another free certificate of* — shares, upon which payment of assessments will be made *promptly as levied.*" Stockholders were

also notified that a first assessment of 2 cents per share would be levied on November 1, 1933. The respondent contends that this transaction does not constitute a "sale" of the stock in question.

The facts of this case differ somewhat from the ordinary method of raising capital by the distribution of "free" assessable stock. Such distribution of stock is distinguished from the instalment selling of stock primarily by the fact that the stockholder is under no personal obligation to pay for the stock, inasmuch as nonpayment of the assessments results simply in forfeiture of his interest. But in the capacity of such a plan to induce persons of little financial competence to invest their savings in speculative enterprises, it is, perhaps, more dangerous than simple instalment selling. It caters both to the innate desire of getting something for nothing as well as leading on a stockholder by risking something in the first instance to try and save that investment by additional contributions. Furthermore, the stockholder too often retains the hope that all the indicated assessments will not be levied. That such schemes for raising capital are common only in highly speculative undertakings, is in itself not without significance.

The precise case raised for our consideration is not difficult of determination. Acceptance of the stock certificate, though it may not have resulted in the assumption of a personal obligation by the stockholder to the corporation to pay the assessments, did result in a personal obligation by the stockholder to Lasher to pay the assessments. Such a transaction, as between Lasher and the prospective stockholders, cannot be regarded otherwise than as a disposition of the stock for value. It was to Lasher's interest as a future recipient of some portion of 1,200,000 shares of nonassessable fully paid stock, to have the working capital for the mining properties supplied by parties other than himself. If any value would accrue to the stock by working the mine, that value would accrue as a result of the cash contributions of others, though it would redound to the benefit of Lasher and his associates as well as to those who paid cash in order to retain their stock.⁵

Some contention was advanced at the argument that the contract between Lasher and his prospects was an illegal contract and unenforceable. *Cf. Dotson v. Hoggan*, 44 Utah, 295, 140 Pac. 128 (1914). Were this true, it would be irrelevant. Lasher was trying to sell the stock, and, even though he should by operation of law fail to acquire a legally enforceable obligation in return for the

⁵ Further benefits from these payments would also accrue to Lasher and Maloney in the form of monthly salaries of \$300 and \$500, respectively.

stock, the fact remains that he made an attempt to secure such an obligation and thus to sell the stock.

The respondent's statements in the registration statement to the effect that this stock was not to be sold by Lasher but was to be given away are therefore untrue. An order, in conformity with this opinion and the Commission's findings, refusing to permit the registration statement to become effective, should, therefore, issue.

STOP ORDER

This matter coming on to be heard by the Commission on the registration statement of Gold Producers, Inc., of Salt Lake City, Utah, after confirmed telegraphic notice by the Commission to said registrant that said registration statement includes untrue statements of material facts and fails to state certain material facts required to be stated therein, or necessary to make the statements therein not misleading, and upon the evidence received in support of the allegations made in the notice of hearing duly served by the Commission on said registrant, and the Commission having duly considered the matter and finding that said registration statement fails to comply with the requirements of the Securities Act of 1933 and the Rules and Regulations promulgated thereunder in the particulars herein ordered to be supplied and corrected, and being now fully advised in the premises:

It is ordered, That the effectiveness of the registration statement filed by Gold Producers, Inc., of Salt Lake City, Utah, is hereby suspended until such time as said statement is amended to supply the information required under items 3, 15, 17, 20, 25, 26, 28, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 50, 51, 54, and Exhibit F of Form A-1, and until amended to conform with the requirements of Articles 15, 16 and 17, of the Rules and Regulations under the Securities Act of 1933, promulgated July 6, 1933, and until amended to conform to the requirements of Section 7 of the Securities Act of 1933.

This order is to remain in full force and effect until the amendments herein indicated have been made and the Commission shall have so declared.

IN THE MATTER OF

CHARLES A. HOWARD, E. HAROLD DeNOYELLES, ELMER
W. MAHER, WILLIAM B. ATWATER, UNDER THE NAME
OF THE BONDHOLDERS PROTECTIVE COMMITTEE
FOR THE CAMBRIDGE APARTMENTS (GERMANTOWN,
PHILADELPHIA)

FINDINGS, OPINION, AND STOP ORDER IN PROCEEDING UNDER SEC. 8(d) OF
THE ACT OF CONGRESS APPROVED MAY 27, 1933

File No. 2-658. Order, March 21, 1934

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—COMMISSION'S JURIS-
DICTION—DEFICIENCIES—MATERIAL FACTS.

Under Section 8(d) the Commission's jurisdiction to issue a stop order is made dependent upon the inclusion in the registration statement of an untrue statement of a material fact or omission therefrom of a material fact required to be stated therein, i.e., "a fact which if it had been correctly stated or disclosed would have deterred or tended to deter the average prudent investor from purchasing the securities in question", or upon the omission of any material fact necessary to make the statements contained in the aforesaid paper not misleading.

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—COMMISSION'S JURIS-
DICTION—DEFICIENCIES—OTHER THAN MATERIAL FACTS.

While deficiencies not relating to material facts do not, under the provisions of the act, give ground for the issuance of a stop order, such deficiencies may be included in the notice to show cause why a stop order should not issue, and a stop order may embrace in its terms such deficiencies, although it must have as a basis for its issuance a deficiency relating to an untrue statement or omission of a material fact.

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—COMMISSION'S JURIS-
DICTION—DEFICIENCIES—MATERIALITY—WHEN QUESTION RAISED.

No question being raised in a proceeding as to whether any deficiencies relate to a material fact, the existence of deficiencies as such, without inquiry into their materiality, need only be considered.

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—DEFICIENCIES—CER-
TIFICATES OF DEPOSIT—ISSUES REPRESENTING FUNDED DEBT OF ORIGINAL
ISSUER, INCLUDING ACCOMPANYING SINKING FUND PROVISIONS AND UNDER-
LYING SECURITY (ITEM 9).

Reply in response to request for such information, to the effect that no sinking-fund provisions accompanied the outstanding bonds, must be held untrue where it appeared that sinking-fund provisions were incorporated in the indenture covering the bonds, the answer being also incomplete in that it failed to state that the obligation secured by the bonds in question constituted a prior lien upon the property subject to the mortgage.

SECURITIES ACT, 1933—"REGISTRATIONS"—TRUTH OF STATEMENT—STATEMENTS NO LONGER, BUT ORIGINALLY CORRECT—WHEN DIVERGENCE DEVELOPED AND KNOWN PRECEDING EFFECTIVE DATE—LIABILITIES AND DUTIES—REGISTRANTS AND OTHERS.

Even though reply "none known", in response to query whether any legal proceedings, known to the registrant, were pending or threatened, which might materially affect securities to be called for deposit, was true when made, registrants should amend their answer, if they learned that such proceedings were in fact pending or threatened prior to the effective date of the registration statement. Under Section 11 truth of statements in the registration is to be tested as of the time said statements become effective, barring, of course, such matters as balance sheets as of date past, and registrants learning prior to effective date of registration, that statements therein made are no longer true, should make said statements reflect such changes as may have occurred, if they would avoid liability under Section 11; liabilities of persons other than the issuer, under Section 11, arising out of the sale of securities sold while such untrue registration statement was in effect depending upon whether they can bring themselves within exculpatory provisions of Section 11 (b) (3).

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—STATEMENTS NO LONGER, BUT ORIGINALLY CORRECT—COMMISSION'S POWER.

Section 8 (d) permits Commission to take action looking to issuance of a stop order at any time that registration statement includes any untrue statement of a material fact as of the time of the taking effect of such registration, but not in the event that it finds that statement in question subsequent to said effective date ceased to reflect the truth.

SECURITIES ACT, 1933—"REGISTRATIONS"—TRUTH OF STATEMENTS—STATEMENTS NO LONGER, BUT ORIGINALLY CORRECT—WHEN DIVERGENCE DEVELOPED AND KNOWN SUBSEQUENT TO EFFECTIVE DATE—LIABILITIES AND DUTIES.

Should statement in "registration" cease to reflect truth following effective date thereof, duty of disclosing true facts rests upon vendors who know or should know the true facts, if they would avoid liability under Section 12 (2) of the Act, and Commission can proceed by injunction under Section 17 (a) against nondisclosing vendors.

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—PENDING OR THREATENED LEGAL PROCEEDINGS (ITEM 11).

Reply "none known", in response to query whether any legal proceedings, known to the registrant, were pending or threatened, which might materially affect securities to be called for deposit, *held* deficient where it appeared that suit for appointment of a receiver for the corporate successor of the original issuer of the bonds involved, was pending.

SECURITIES ACT, 1933—"REGISTRATIONS"—TRUTH OF STATEMENTS—HALF TRUTHS.

Reply, "unknown", in response to query asking names, of any persons soliciting the deposit of any securities of the original issuer, where the fact was known that a competing committee was seeking the right to solicit same bonds but said committee's registration statement could not become effective until after the making of such reply, constitutes a half truth and the very type of untruth to which the language of the Securities Act relating to omission of material facts, has reference, since "false in a material particular", in conveying "false impression." *Rex v. Kysant* (1932), 1 K. B. 442.

SECURITIES ACT, 1933—"REGISTRATIONS"—TRUTH OF STATEMENTS—STOP ORDERS—INTENTIONAL UNTRUTH—EXAMINER'S REPORT—SUGGESTIONS AS TO CRIMINAL PROCEEDINGS—STATUS.

A motion in behalf of registrants to strike out a part of the examiner's report which considered false statement of registrants a matter for the attention of the Department of Justice, was unnecessary. The examiner's report is merely an aid to the finding of the facts by the Commission, but not its finding of facts, and whether or not registrants were guilty of an intentional untruth and thus a crime, is a matter not relevant to a stop order proceeding, although intentional untruth is relevant with reference to items that call for facts "if known" to the registrant. And though it is the duty of examiners, as well as all other employees of the Commission, to bring to the Commission's attention such criminal violations as may come to their attention, a finding that in the examiner's judgment registrant has committed a crime as well as given cause for the issuance of a stop order, has no place in an examiner's report in a stop order proceeding.

SECURITIES ACT, 1933—"REGISTRATIONS"—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—WHETHER ANY OTHERS SOLICITING DEPOSIT, ETC. (ITEM 13).

Answer "unknown", in response to question whether any person soliciting deposit of securities of original issuer, *held*, under circumstances, deficient.

SECURITIES ACT, 1933—"REGISTRATIONS"—CERTIFICATES OF DEPOSIT—STOP ORDERS—DEFICIENCIES—MISCELLANEOUS—IRRESPONSIVE DATES (ITEM 19)—HOW NOTICE TO DEPOSITORS (ITEM 34)—OBLIGATIONS ASSUMED BY ISSUER RE CERTAIN FEES (ITEM 36)—CONNECTIONS BETWEEN DEPOSITARIES AND ISSUER (ITEM 41)—ABSENCE OF EXHIBITS D AND F—INCORRECT DATE OF CALL—LACK OF RECONCILIATION AND TIE OF PROSPECTUS AND REGISTRATION STATEMENT.

Answers supplying information as of dates prior to those demanded—Item 19; omitting to specify how notice of adoption of plan is to be given to depositors, for which alternative methods are provided in the deposit agreement (limiting depositors' right of withdrawal to fifteen days after "notice" of adoption of plan)—Item 34; failing to set forth obligations assumed by the issuer *re* payment of certain fees to persons associated therewith in the project—Item 36; setting forth that no members of the issuer were connected in a business or professional manner with depositaries named, except that certain members of the issuer and counsel had been connected with other committees where said depositaries had acted in a similar capacity, and thereby incomplete in failure of such answer to particularize, even though briefly, such prior business and professional connections—Item 41; and failure to supply Exhibits D and F, called for by form involved, fixing proposed time of call for deposit as of a date which antedated by three weeks earliest possible effective date of registration statement and hence time when such call could lawfully be made, and failure to furnish reconciliation and tie of data shown in prospectus with those shown in registration statements, as required by article 16 of the rules and regulations under the act; constitute deficiencies, along with those hereinabove set forth, making issuance of stop order imperative.

Mr. Richard P. Whiteley and *Mr. William Green* for the Commission.

Mr. Elmer W. Maher and *Mr. William Lehrman*, of New York City, for registrant.

FINDINGS AND OPINION OF THE COMMISSION

This is a proceeding under Section 8 (d) of the Securities Act of 1933, for the issuance of a stop order suspending the effectiveness of the registration statement filed by the above respondents on Form D-1, on February 2, 1934, upon the ground that the registration statement includes untrue statements of material facts and omits to state material facts required to be stated in the registration statement or necessary to make the statements therein not misleading. Notice of this proceeding, which notice set forth the deficiencies found by the Commission to exist in the registration statement of the respondents, was sent by day telegram to the authorized agent of the respondents on February 14, 1934, and confirmed, as required by Section 8 (d) of the Securities Act of 1933. An opportunity for hearing was given respondents and a hearing was held in Washington on February 21, 1934, before an examiner of the Commission, at which hearing the respondents were represented by their attorneys.

The matters alleged to be deficient are Items 9, 11, 13, 19, 34, 36, 38, 41, Exhibits D and F, and the date of the proposed call for deposits. The prospectus was also alleged not to conform with the Rules and Regulations of the Commission.

The Commission's jurisdiction to issue a stop order under Section 8 (d) relates to deficiencies arising out of statements of material fact contained in the registration statement or omissions to state material facts required to be stated in the registration statement or necessary to make the statements therein not misleading. It will thus be seen that a condition precedent to the issuance of a stop order is the existence of deficiencies relating to statements or omissions of material facts. Deficiencies not relating to material facts do not give ground for the issuance of a stop order. They may, however, be included in a notice to show cause why a stop order should not be issued, and the stop order may embrace in its terms such deficiencies, although it must have as a basis for its issuance a deficiency relating to a statement or omission of a material fact.

No question is raised in this proceeding as to whether any of the deficiencies relate to a material fact, or, in other words, a fact which if it had been correctly stated or disclosed would have deterred or tended to deter the average prudent investor from purchasing the securities in question. *Broome v. Speak* (1903), 1 Ch. 586, 604, aff'd. in (1904) A.C. 342; *Smith v. Chadwick*, 9 App. Cas. 187; 5 Halsbury's Laws of England (2d ed.) 210 n.; 1 Palmer's Cos. Prec. (14th ed.) 157; Buckley, The Companies Act (11th ed.) 73-74. Consequently, in this proceeding we need only consider the existence of deficiencies as such without inquiry into their materiality.

The registration statement in question (File No. 2-658) consists of Part 1 of Form D-1, and sets forth the issuance of certificates of deposit by a bondholders' protective committee against First Mortgage Six Percent Gold Bonds of the amount of \$1,397,500, secured by a mortgage on land and building known as "Cambridge Apartments, located at School House Lane, Alden Park, Germantown, Philadelphia, Pennsylvania." The protective Committee consists of the four named respondents, none of whom holds any interest of record and/or beneficially in the securities of the original issuer.

Item 9 of the registration statement, which calls for a listing of all issues representing the funded debt of the original issuer, also calls for the sinking fund provisions which accompany such issues and the security which underlies them. In answering this item, the registrant stated that there were no sinking fund provisions accompanying the outstanding bonds. This statement is untrue inasmuch as sinking fund provisions are to be found incorporated in the indenture covering these bonds. Furthermore, the registrant made no statement to the effect that these bonds constituted a prior lien upon the property subject to the mortgage.

Item 11 calls for a statement of such legal proceedings, known to the registrant, which may be pending or may be threatened and which might materially affect the securities to be called for deposit. It also asks for a brief description of their nature and a statement of the names of the parties to the action. To this item the registrant replied: "None known." Evidence was introduced at the trial that a suit for the appointment of a receiver for the Cambridge Building Corporation (the successor in interest of C. Benton Cooper, the original issuer of the bonds sought to be called for deposit) was pending in the Pennsylvania courts. It may well be true that registrants had no actual knowledge of this pending litigation and that consequently the statement made by them in the registration statement was true as of the time of the making of that statement. But, if prior to the time that the registration statement became effective, registrants learned of the pendency of such litigation, they would be required to amend that statement in their registration statement in order for the registration statement to be free from deficiencies, since under Section 11 the truth of the statements in the registration statement is to be tested as of the time that they become effective.

This does not, of course, mean that a statement in the registration statement purporting obviously to state a fact as of some time in the past, as for example, statements in a dated balance sheet, must speak as of the date of the effectiveness of the registration statement; but, in order to be certain to avoid the possibility of liability arising

under Section 11, it becomes necessary for registrants in answer to a question, such as that embodied in Item 11, which calls merely for such facts as are within their actual knowledge, to state those facts as of the time that the registration statement becomes effective. In other words, if the state of the registrants' knowledge changes between the time that the registration statement is actually signed and the time that it becomes effective, the registration statement should reflect that change.

Section 11 sets forth the time when the truth of the statements in the registration statement is to be tested. If a statement is true when made, but the registrant learns prior to the date when the registration statement becomes effective that the statement is untrue, a duty of correcting that statement rests upon the registrant, if it would avoid liability under Section 11. Section 8 (d) permits the Commission "at any time that the registration statement includes any untrue statement of a material fact * * *" to take action looking toward the issuance of a stop order. This section does not, however, permit the Commission to issue a stop order if it finds that a statement which reflected the truth as of the time the registration statement became effective no longer reflects the truth. It does, however, permit the Commission *at any time* that it finds a statement does not reflect the truth as of the time that the registration statement became effective to issue a stop order. The distinction may be illustrated by two simple illustrations.

Let us suppose that the registration statement contained a statement to the effect that the registrant owned 500 acres of timbered land, and that after the registration statement became effective a forest fire destroyed the timber on 250 of these acres. The statement made by the registrant would still reflect the truth as of the time that the registration statement became effective and thus would give no ground for the issuance of a stop order. Vendors, who knew or should have known of this fact, would, however, thereafter be under a duty to disclose that fact to their customers in order to avoid the liabilities of Section 12 (2); and the Commission could proceed by injunction against such nondisclosing vendors under Section 17 (a).

On the other hand, let us suppose that the statement that the registrant owned 500 acres was based upon a mistaken survey, and that after the registration statement became effective a second and correct survey disclosed that the registrant only owned 250 acres. In such a case, the statement would be untrue as of the time that the registration statement became effective, and the Commission could proceed by stop order unless appropriate amendments were

made to the registration statement. The liability of any person, other than the issuer,¹ under Section 11 arising out of the sale of the securities sold while the untrue registration statement was in effect would depend upon whether these persons could bring themselves within the exculpatory provisions of Section 11 (b) (3).

Item 13 asks: "If known, state whether or not any other person or persons are soliciting the deposit of any securities of the original issuer, and, if known, state the name and address of such person or persons". To this registrant answered: "Unknown". On January 23, 1934, more than a week prior to the filing of this registration statement, one of the registrants wrote to the Washington representative of the Corporation Trust Co., requesting a photostatic copy of the list of the bondholders of the Cambridge Building Corporation as contained in the registration statement (File No. 2-583) filed with the Federal Trade Commission by another committee seeking the right to solicit the deposit of the same outstanding bonds as are covered by this registration statement. Despite such knowledge, registrants made the above answer to Item 13. It is true that the registration statement of the competing, protective committee did not become effective until after February 2, 1934—the date of the filing of this registration statement.

A literal and technical construction of Item 13 would support the view that no other person or persons at that time were soliciting the deposit of the securities in question, inasmuch as the solicitation by the competing committee could not lawfully begin until after their registration statement became effective. Such construction, however, ignores the obvious purpose of the item to elicit information as to whether any other protective committees are in the field. The fact that registrants knew that solicitation by others was planned, and that in all probability another protective committee would be actively soliciting deposits before the registrants themselves made their call for deposits, would certainly not be the conclusion that would be drawn by the average mind from the registrant's answer to Item 13. But the half-truth embodied in the registrant's answer is the very type of untruth to which the language of the Securities Act relating to omissions of material fact has reference. In the language of Mr. Justice Avory, the registrants' statement is "false in a mate-

¹ Instances will, of course, occur where even the issuer, by the exercise of the required degree of diligence, will escape liability despite the fact that statements of material facts in the registration statement are untrue, where, as in Form D-1, by the rules and regulations of the Commission the information is required to "be furnished by the issuer, if such information is known or reasonably should be known by the issuer". The effect of this regulation is entirely overlooked in Douglas and Bates, "The Federal Securities Act of 1933," 43 Yale L.J. 171, 214.

rial particular in that it conveyed a false impression". *Ree. v. Kylsant*, (1932) 1 K.B. 442, 448.²

The remaining deficiencies may be easily disposed of. Item 19 is inaccurate in that it answers the questions asked as of dates prior to those demanded by the item. Item 34 omits to state the means whereby notice of the adoption of the plan is to be given to depositors, which under the deposit agreement may be given either by mail to the depositors or "by publication thereof once in each of two successive calendar weeks, upon any day in the week, in a daily newspaper of general circulation, printed in the English language, published in the Borough of Manhattan in the City of New York", and any such notice "shall be conclusively taken and considered as though personally served on all holders of certificates of deposit as of the date of mailing or of the first publication thereof, as the case may be, whether they receive actual notice or not, and such mailing or publication, as the case may be, shall be the only notice required to be given under this agreement or under any provision thereof." It is not amiss to point out that the right of withdrawal given to depositors after "notice" of the adoption of the plan was limited to a period of fifteen days after the giving of such "notice."

The answer to Item 36 is deficient in that no effort was made in that answer to set forth the obligations which the issuer had assumed binding it to pay certain fees to persons that it had associated with it in this project. Item 41 calls for a statement of any business and professional connections between each depositary and the issuer and any member thereof. In answer to the item, the issuer stated that "none of the members of the issuer are connected in any business or professional manner with the depositaries named (The Lawyers County Trust Co. of New York City), except that certain of the members of the issuer and counsel have been connected with other committees where the depositaries named have acted in similar capacity." The answer is incomplete as these prior business and professional connections should have been particularized though a brief particularization would be wholly adequate.

² Counsel for the registrants moved to strike out that portion of the examiner's report which considered this false statement of registrants a matter for the attention of the Department of Justice. Such a motion was unnecessary. The examiner's report is merely an aid to the finding of the facts by the Commission but is not its finding of the facts. Whether or not registrants were guilty of an intentional untruth and thus a crime is a matter not relevant to a stop order proceeding, although intentional untruth is relevant with reference to such items that call for facts "if known" to the registrant. Though it is the duty of examiners, as well as all other employees of the Commission, to bring to the Commission's attention such criminal violations as may come to their attention, a finding that in the examiner's judgment a registrant has committed a crime as well as given cause for the issuance of a stop order has no place in an examiner's report in a stop order proceeding.

Exhibits D and F were not supplied. The date of the proposed call for deposit, which could not lawfully be made until the registration statement became effective, which could be no sooner than twenty days after February 2, 1934, was given as February 1, 1934. No reconciliation and tie of the data shown in the prospectus with that shown in the registration statement was furnished as is required by Article 16 of the Rules and Regulations under the Securities Act of 1933, promulgated July 6, 1933.

These deficiencies make the issuance of a stop order imperative.

STOP ORDER

This matter coming on to be heard by the Commission on the registration statement of Charles A. Howard, E. Harold DeNoyelles, Elmer W. Maher, William B. Atwater, as a bondholders' protective committee for The Cambridge Apartments, New York, N.Y., after confirmed telegraphic notice by the Commission to said registrant that said registration statement includes untrue statements of material facts and fails to state certain material facts required to be stated therein or necessary to make the statement therein not misleading and upon the evidence received in support of the allegations made in the notice of hearing duly served by the Commission on said registrant, and the Commission having duly considered the matter and finding that said registration statement fails to comply with the requirements of the Securities Act of 1933 and the Rules and Regulations promulgated thereunder in the particulars herein ordered to be supplied and corrected, and being now fully advised in the premises:

It is ordered, That the effectiveness of the registration statement filed by Charles A. Howard, E. Harold DeNoyelles, Elmer W. Maher, William B. Atwater, as a bondholders' protective committee for The Cambridge Apartments of New York, is hereby suspended until such time as said registration statement is amended to supply the information required under Items 9, 11, 13, 19, 34, 36, 38, 41, and Exhibits D and F of Form D-1, part I, and until amended to conform with the requirements of Article 16 of the Rules and Regulations under the Securities Act of 1933, promulgated July 6, 1933, and until amended to conform to the requirements of Section 7 of the Securities Act of 1933.

This order is to remain in full force and effect until the amendments herein indicated have been made and the Commission shall have so declared.

IN THE MATTER OF
COMMONWEALTH BOND CORPORATION AS COMMITTEE FOR FIRST MORTGAGE FIVE PERCENT SINKING FUND GOLD BONDS OF TUDOR CORPORATION

FINDINGS, OPINION, AND STOP ORDER IN PROCEEDING UNDER SEC. 8(d) OF THE ACT OF CONGRESS APPROVED MAY 27, 1933

File No. 2-440. Order, May 23, 1934

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—COMMISSION'S JURISDICTION—DEFICIENCIES—CONSIDERATION GENERALLY—MATERIAL DEFICIENCIES AS PREREQUISITE.

The Commission's jurisdiction to issue a stop order under Section 8 (d) is conditioned upon the existence of untrue statements with regard to, or omissions to state, material facts, but, given such material deficiencies, the stop order may embrace in its terms other deficiencies which have been included in the notice to show cause and established as deficiencies. *F.T.C. v. Howard et al.* No. 2-658, March 21, 1934, 13 F.T.C. 626.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—COMMISSION'S JURISDICTION—DEFICIENCIES—MATERIALITY—WHEN QUESTION RAISED.

No question being raised by respondent regarding the materiality of any of the deficiencies involved, their existence as such will be considered without discussion of their materiality. *F.T.C. v. Howard, supra.*

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—CERTIFICATES OF DEPOSIT—PENDING OR THREATENED LEGAL PROCEEDINGS WHICH MIGHT MATERIALLY AFFECT SECURITIES CALLED OR PLAN (FORM D-1, ITEMS 11 AND 65)—SUIT FOR ACCOUNTING AND DISCOVERY AGAINST CORPORATION, BONDS OF WHICH TO BE CALLED.

Suit in equity brought by holders of defaulted bonds against the issuer for accounting and discovery of rents, issues and profits held to constitute legal proceedings which might materially affect securities to be called for deposit and the plan of reorganization and should therefore have been mentioned in registration statement of committee for bondholders in answer to items 11 and 65 of form D-1 calling for statement of such proceedings.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—PENDING OR THREATENED LEGAL PROCEEDINGS WHICH MIGHT MATERIALLY AFFECT SECURITIES TO BE CALLED (ITEMS 11 AND 65)—KNOWLEDGE OF REGISTRANT—WHEN OTHER DEFICIENCIES DEFINITELY ESTABLISHED.

A finding of fact as to registrant's knowledge of legal proceedings which it failed to mention in registration statement is not necessary where other deficiencies have been so definitely established that stop order must issue.

SECURITIES ACT, 1933—"UNDERWRITER"—REORGANIZATION COMMITTEE AS (SEC. 2(11).)

A reorganization committee, acting as such, is not to be regarded as an "underwriter" within the meaning of Section 2(11) of the Act.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATE OF DEPOSIT—NAMES, ETC. OF PRINCIPAL ORIGINAL UNDERWRITERS OF SECURITIES CALLED AND STATEMENT OF GROSS COMPENSATION OR PROFITS (ITEM 12)—REORGANIZATION COMMITTEE AS PRIOR UNDERWRITER—PRIOR DIRECT OR INDIRECT RELATIONS WITH, AND PROFITS FROM, PROPERTY INVOLVED—DUTY OF FULL DISCLOSURE.

Where registrant now acting as committee acted as original underwriter and as reorganization committee in intervening reorganization, although technically there was no underwriter of securities now to be called for deposit, a statement that there was no such underwriter, in reply to item calling for such underwriter's gross profits if connected with present issuer, would be deficient in view of facts (1) that registrant had made profits from intervening reorganization by exercising right to acquire interest of nondepositing bondholders and by failing to pay certain expenses incidental to reorganization which it had agreed to assume and (2) that registrant had received profits in original underwriting of the bonds which were replaced in the intervening reorganization. Such facts have an important bearing upon its fitness to act in similar capacity for the present issue, and such facts are so allied to the underwriting process, that failure to disclose them, as aforesaid, would make the statement so misleading as to prevent that full and fair disclosure demanded by the relationship involved and by the very purpose of the Act itself.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—BALANCE SHEET OF ORIGINAL ISSUER—(ITEM 14).

Where statement calls for last balance sheet of original issuer as published or reported to security holders, none need be given if none published or reported, but submission of operating statement instead which omits reference to taxes appears to be misleading.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—BUSINESS OF ISSUER (ITEM 17).

Statement that principal business of issuer as a committee is "real estate bonds", when registrant had sold no bonds for years, but had engaged instead in the reorganization of its own bond issues and insuring properties, through its subsidiaries, failed to give clear indication of present character of business.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—INTEREST OF ISSUER OR COMMITTEE MEMBERS, IN PROPERTY OR OBLIGATION OF ORIGINAL ISSUER, OR OF ANY PERSON DIRECTLY OR INDIRECTLY LIABLE WITH RESPECT TO SECURITIES TO BE CALLED, OR IN ANY PROPERTY SECURING SAME (ITEM 21)—NATURE OF INTEREST—COLLATERAL OR INCIDENTAL BENEFITS—PLACING OF INSURANCE—FREE RENT.

Registrant, owner of a majority of the stock of original issuer, the bonds of which it proposed to call for deposit, owned a subsidiary which continuously handled the insurance on said corporation's apartment house property, and its president, up to a date some years before, had had at his disposal a rent free apartment therein, furnished by him, and occupied by resident manager and family. Failure to set forth said facts was challenged. *Held*, That the interest which must be stated under such item is limited to that "in any property or obligation" of original issuer, or of persons liable with respect to securities in question, and does not embrace remuneration in connection with insurance of premises, and evidence as to rent free apartment does not extend beyond date in question.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—CONNECTIONS OF COUNSEL FOR ISSUER WITH ORIGINAL ISSUER OR PRINCIPAL UNDERWRITER OF SECURITIES THEREOF (ITEM 25).

Reply "none" to item calling for nature of business or professional connections of counsel for issuer with original issuer or principal underwriter held deficient, where it appeared that counsel for issuer were attorneys of record for original issuer in trustee's foreclosure action, as well as in action for an accounting.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—"REASONS WHY DEPOSIT OF CERTIFICATES IS DESIRED" (ITEM 26)—GOOD FAITH.

Registrant's statement that securities were called to enable Committee to protect interests of bondholders, was challenged as untrue and misleading in that real purpose was to convert interest-bearing into income bonds, so that control of property by registrant's wholly owned subsidiary, might be perpetuated during life of 10-year voting trust included in reorganization plan. *Held*, without foreclosing question of real purpose behind the call, as it might subsequently arise in criminal and civil proceedings, deficiency in respect thereto was not clearly established.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—PROVISIONS OF DEPOSIT AND ALL OTHER AGREEMENTS RE FEES AND EXPENSES, PAID OR TO BE PAID, DIRECTLY OR INDIRECTLY, ETC. (ITEM 36)—PROVISIONS UNDER WHICH POSSIBLE BENEFIT TO REGISTRANT EQUIVALENT TO INDIRECT FEE.

Answer held deficient in that it failed to summarize provision in deposit agreement that, in case all bonds were not deposited, and total distributive value of those deposited was less than bid price, registrant as Committee should have right to pay difference, and be deemed a depositor, *pro tanto*, of bonds not deposited (subject to certain rights of nondepositors to come in), since application of such provision might result in a benefit to registrant, equivalent to indirect fee.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—WHO TO DETERMINE FEES OF ISSUER, MEMBERS, COUNSEL AND DEPOSITARY; CONNECTIONS OF PARTY SO DETERMINING, WITHIN FIVE YEARS, WITH ISSUER, ORIGINAL ISSUER, AND ANY PRINCIPAL UNDERWRITER OF SECURITIES THEREOF (ITEM 37) AND SIMILAR STATEMENT AS TO FEES CONNECTED WITH PLAN (ITEM 63)—DISCLOSURE OF SUCH CONNECTIONS WHEN FEES DETERMINED BY ISSUER, ORIGINAL ISSUER, OR UNDERWRITER OF SECURITIES CALLED.

Where party determining fees of the issuer and its members and counsel and of the depositary is either the issuer, the original issuer or the underwriter of the securities called for deposit, it is not necessary to state the connections of such party within five years with the issuer, the original issuer, or any principal underwriter of the securities of the original issuer.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—EVERY MATERIAL CONTRACT DIRECTLY OR INDIRECTLY AFFECTING DEPOSIT AGREEMENT, PLAN, OR SECURITIES TO BE ISSUED THEREUNDER (ITEMS 38 AND 61)—LOAN COMMITMENTS—REMUNERATION OF DEPOSITARY.

Answer to items regarding material contracts affecting the deposit agreement, plan or securities to be issued under plan, was deficient which (1) failed to state that registrant had obtained commitment for a loan, to be advanced to it as reorganization manager to fulfill foreclosure bid, and (2) failed to mention contract between registrant and trust company providing for latter's remuneration for service as depositary under depositary agreement.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—CONNECTIONS BETWEEN EACH DEPOSITARY AND ISSUER AND ANY MEMBER (ITEM 41).

Answer to item calling for business or professional connections between each depositary and issuer and any member thereof was deficient which stated that there were no such connections, where it appeared that depositary was acting in similar capacity for registrant in other defaulted bond issues.

SECURITIES ACT, 1933—REGISTRATIONS — STOP ORDERS — DEFICIENCIES — CERTIFICATES OF DEPOSIT—ESSENTIAL FEATURES OF PLAN NOT PREVIOUSLY CALLED FOR AND REASONS FOR ADOPTION OF PLAN (ITEM 52)—FAILURE TO DISCLOSE COMMON IDENTITY OF REGISTRANT'S OFFICERS WITH THOSE OF NEW COMPANY RE LATTER'S SERVICE WITHOUT SALARY.

Answer stating that officers of new corporation, to hold the property, shall serve without salaries, and voting trustees without compensation, held deficient where it developed that officers of said new corporation were identical with those of registrant and its subsidiaries, and were thus in fact compensated.

SECURITIES ACT, 1933—REGISTRATIONS — STOP ORDERS — DEFICIENCIES — CERTIFICATES OF DEPOSIT—SECURITIES OF ORIGINAL ISSUER HELD BY REORGANIZATION MANAGERS. (ITEM 53.)

Answer as to amounts of original issuer's securities held by reorganization managers found to be false.

SECURITIES ACT, 1933—REGISTRATIONS — STOP ORDERS — DEFICIENCIES — CERTIFICATES OF DEPOSIT—OTHER PLANS. (ITEM 64.)

Answer to item calling for statement as to existence of other plans if known was deficient in disclaiming such knowledge, where registrant had issued letter criticizing rival plan, though details of latter not known.

SECURITIES ACT, 1933—REGISTRATIONS — STOP ORDERS — DEFICIENCIES — CERTIFICATES OF DEPOSIT—OPERATING STATEMENT—ASSERTED LACK, WHERE BOOKS AND RECORDS OF ORIGINAL ISSUER CONTINUOUSLY IN POSSESSION AND CONTROL OF REGISTRANT AND INCOME TAX RETURNS FILED.

Assertion that no operating statement was available in past few years, held, in substance, untrue, where it appeared that books and records of the original issuer, stock of which registrant largely owned, had been in control and possession of latter and its officers continuously, and that income tax returns had been filed.

SECURITIES ACT, 1933—REGISTRATIONS — STOP ORDERS — DEFICIENCIES — CERTIFICATES OF DEPOSIT—STATEMENTS IN NATURE OF PROPHECIES—WHEN MADE WITH KNOWLEDGE OF UNTRUTH AS OF TIME OF MAKING.

A prophecy known to be untrue at the time it was made is to be regarded as an untrue statement of facts.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—PROSPECTUS—PLAN OF DISTRIBUTION OF CASH PROCEEDS TO DEPOSITING BONDHOLDERS—UNWARRANTED IMPLICATIONS RE FUTURE PROSPECTS.

Reference in prospectus to plan for distribution of cash proceeds of new mortgage, with implication that cash returned to depositing bondholders would be more than that received by nondepositors, reflected optimism of an unwarranted nature, in that evidence, while falling short of establishing actual unbelief therein when made, indicated little hope by president of registrant as to any possible cash return to depositing bondholders, and,

due to intervening developments, was of such character that repetition, as of a subsequent effective date following stop order required, would be clearly deficient.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—DEFICIENCIES—CERTIFICATES OF DEPOSIT—PROSPECTUS—WHERE COPY OF PLAN OF FINANCING ON FILE.

Statement in prospectus that copy of plan was on file with trust company when such was not the case held to constitute deficiency, requiring, along with those hereinabove set forth, issuance of appropriate stop order.

Mr. Richard P. Whiteley, Mr. Harold H. Neff, and Mr. Andrew Ten Eyck for the Commission.

Mr. John Paul and Mr. Charles M. Cox, of New York City, and *Mr. John Walsh*, of Washington, D.C., for registrants.

FINDINGS AND OPINION OF THE COMMISSION

The proceeding is for a stop order suspending, pursuant to section 8 (d) of the Securities Act of 1933, the effectiveness of the respondent's registration statement filed on form D-1 on November 14, 1933, on the ground that it includes untrue statements of material facts and omits to state material facts required to be stated therein or necessary to make the statements therein not misleading. Telegraphic notice was sent to respondent on February 14, 1934, and duly confirmed as required by section 8 (d). Hearings were held in Washington on February 27 and March 1 and 7, 1934, at which respondent was represented by counsel. The respondent is the Commonwealth Bond Corporation Committee. The title of the proceeding was by stipulation changed to that indicated above in order to avoid confusion with other registrations filed by respondent.

The Commission's jurisdiction to issue a stop order under section 8 (d) is conditioned upon the existence of untrue statements with regard to, or omissions to state, material facts, but, given such material deficiencies, the stop order may embrace in its terms other deficiencies which have been included in the notice to show cause and established as deficiencies. *Federal Trade Commission v. Howard*, 18 F.T.C. 626 (1934). In this proceeding, respondent has raised no question regarding the materiality of any of the deficiencies, and thus the existence of deficiencies will be considered without discussion of their materiality. *Federal Trade Commission v. Howard*, supra.

Commonwealth Bond Corporation has in the past underwritten a number of real estate bond issues. Among these was the issuance in 1926 of 7 percent bonds to the extent of \$590,000 on the Tudor Hall Apartments at 275 Engle Street, Englewood, N.J. Upon the occasion of a default by the mortgagor, the property was reorganized

in 1929, the Commonwealth Bond Corporation acting as a committee for bondholders. Under the terms of this reorganization the bondholders were given in exchange 5 per cent bonds of equal face value issued by the newly formed Tudor Corporation together with one share of stock in that corporation per thousand dollars. The stock thus distributed constituted one half of the capital stock of the corporation. The other half was issued to the respondent for its services and expenses as reorganization committee. It has since increased its holdings, so that it now owns an absolute majority of the stock.

In May, 1932, foreclosure proceedings were instituted by the trustee of the new bonds on account of a default arising from nonpayment of the real estate taxes on the mortgaged premises. Shortly thereafter respondent constituted itself a committee for the bondholders and issued a call for deposits.

The present registration statement was first filed solely on Part II of Form D-1, dealing only with the promulgation of a plan. Since, however, there was to be a further solicitation of deposits, the Commission required that there be filed as an amendment thereto Part I of D-1, which was done.

The foreclosure proceeding finally resulted in a decree of sale. The property was bid in by respondent acting as the committee, on December 20, 1933, for \$107,000. Tudor Hall, Inc., was organized in January, 1934, by the respondent for the purpose of taking title to the property. A meeting for the closing of title was held on February 16, 1934, but the title was not closed.

The original complaint charges registrant with having made untrue and misleading answers to certain items in the registration statement, to wit: 11, 17, 23, 26, 41, 61, and 64. The attorney for registrant stipulated that items other than those enumerated might be considered as if they appeared in the original complaint. By virtue of said stipulation, the following items were also considered: 12, 14, 21, 25, 36, 37, 38, 46, 52, 58, 63, 65, and the prospectus. Item 7 was also added, but together with item 23 was later eliminated. Item 46 was waived by counsel for the Commission after conclusion of the hearings.

Item 11 of the registration statements calls for a brief description of the nature of any legal proceedings pending or threatened, known to the registrant, which might materially affect the securities to be called for deposit. Item 65 constitutes a similar requirement with regard to legal proceedings which may materially affect the securities or the plan of readjustment or reorganization. In each case the answer, while referring to the foreclosure action brought by the trustee, omits to make any statement concerning a certain legal proceeding entitled "*Martin Frobisher, et al. v. Tudor Corporation*",

which was instituted on October 13, 1933. This is a suit in equity, for the benefit of the holders of the bonds covered by the registration statement, for the purpose of requiring an accounting and discovery by the Tudor Corporation of rents, issues, and profits held by it. The proceeding is such that it might materially affect the securities to be called for deposit, since the net proceeds of any such suit would be distributable to the holders of the bonds called for deposit. The officers of the Tudor Corporation were identical with the officers of the registrant. The attorneys acting for the registrant, were likewise attorneys for the defendant in the above entitled action. A notice of motion on behalf of the defendant, Tudor Corporation, was filed in said action on November 3, 1933. Thus the attorneys for the registrant had notice of the pending litigation. But the president and treasurer of respondent, nevertheless, testified that they had no knowledge of the suit in question until after the effective date of the registration statement.¹

It is not necessary for present purposes to make a finding of fact with regard to knowledge of the proceedings. Other deficiencies, discussed below, have been so definitely established that a stop order must issue. Since a new registration statement would have to speak as of its effective date, there will now be no question with regard to such knowledge if the litigation is still pending or threatened.

Item 12 provides: "State the names and addresses of the principal original underwriters of the securities to be called for deposit. If the issuer or any member thereof is connected with any such underwriter, state also the gross compensation received or gross profit made by such underwriter in connection with such underwriting."

To this registrant answered: "Commonwealth Bond Corporation (the issuer) was the principal underwriter of the securities called for deposit. It received as gross compensation therefor one half of the capital stock of Tudor Corporation (the original issuer)."

It is contended that this answer is untrue in three respects. First, it states that the Commonwealth Bond Corporation was the principal underwriter of the securities called for deposit, whereas, in fact, the corporation acted merely as a committee or reorganization manager for the reorganization of an issue which it had previously underwritten. A reorganization committee, acting as such, is not to

¹ The president of the respondent testified on Mar. 1, 1934, that he "did not learn of the institution of this action until yesterday afternoon, when I ascertained the facts by telephoning to the offices of Ricker & Ricker (attorneys for the registrant)." The treasurer of the respondent testified on Mar. 7, 1934, that he learned "about a month ago", and came to learn of it because of advice from the Commission of the apparent misstatement in the registration statement which caused him to have an employee telephone the attorneys. He stated that he and the president learned of the suit at the same time, but conceded that this was merely a conclusion on his part inasmuch as he had not personally informed the president of what he had learned from the attorneys.

be regarded as an "underwriter" within the meaning of section 2 (11). It is true, however, that the respondent was the principal underwriter of the 7 percent bonds originally issued on the Tudor Hall Apartments. But these bonds had been exchanged for the 5 percent bonds issued following the reorganization of 1929. It is the 5 percent bonds that are now being called for deposit. There was no principal underwriter of these securities, the underwriting relating to the earlier 7 percent bonds.

Counsel for the Commission contends in the second place that the answer is false in omitting to state that in the reorganization of 1929 the Commonwealth Bond Corporation received \$7,800 of bonds at a price of \$8.59 per thousand, as a result of exercising its right to acquire the interests of nondepositing bondholders on payment of an amount equal to their distributive share. Likewise, counsel for the Commission contends that certain "organization expenses" amounting to \$1,575.20 should properly be classified as costs "incidental to the incorporation of the new holding company and the issuance of the new securities." Respondent had agreed to assume such costs, and since the amount in question was ultimately paid by Tudor Corporation, it is argued that this payment amounted to a clear profit for the Commonwealth Bond Corporation.

Thirdly, the answer to Item 12 is attacked on the ground that it should have mentioned the gross compensation or gross profits received by the Commonwealth Bond Corporation in the original financing of the building in question, where it concededly was the principal underwriter.

A strict and literal interpretation of Item 12 would consider as satisfactory an answer by the respondent that there was no principal underwriter of the securities called for deposit, and consequently would make irrelevant both the further information furnished by the respondent in answer to Item 12 and the information which counsel for the Commission contended should be included. But obviously the position of respondent as having received substantial underwriting profits in the distribution of the original 7 percent bonds and as having received further substantial profits, including control of the issuer, in acting as a reorganization committee for the bonds it originally distributed, has an important bearing upon its fitness to act in the capacity of a reorganization committee for the bond issue now in question. The intrinsic fiduciary relationships existing between a protective committee and the depositing bondholders call for full and fair disclosure of these facts. And these facts, as the partial answer of the respondent itself demonstrates, are of the type so allied to the underwriting process that the failure to disclose them by the simple statement that there were no underwriters of the securi-

ties called for deposit would make such a statement so misleading as to prevent that full and fair disclosure which it is the very purpose of the Securities Act to demand.

Item 14 requires "if available to the issuer, give the last balance sheet of the original issuer² as published or reported generally to its security holders." No balance sheet had ever been "published or reported" to the security holders of the Tudor Corporation. Accordingly, this item could have been satisfied by a statement that there was no such balance sheet. However, respondent submitted under this item an operating statement for the year 1931, making no reference to real estate taxes for that period, which were not paid.³ This omission appears to make the statement misleading.

Under Item 17 the registrant is required, if the issuer be a committee, to give the name, address and principal business of each member thereof. In answer to this, the principal business of Commonwealth Corporation Committee is stated as "real estate bonds". Owing to general economic conditions, the company has sold no bonds since 1930, and has instead been engaged in reorganization of its own defaulted bond issues, as well as in managing and insuring the property involved through its subsidiaries. This, it is contended, amounts to a false answer. The answer certainly gave no clear indication of the character of business now being done by the respondent.

Item 21 requires the registrant to state the amount and describe the nature of any interest of the issuer or of the members of the committee, if the issuer be a committee, in any property or obligation of the original issuer or in any property or obligation of any person liable, directly or indirectly, with respect to the securities to be called for deposit or in any property securing the securities called for deposit. The answer given is "none". In fact, the Hamilton Brokerage Company, a wholly owned subsidiary of the Commonwealth Bond Corporation, has continuously handled the insurance on the apartment property in question, and the president of the Commonwealth Bond Corporation had until 1931 at his disposal an apartment in the building without payment of rent, which is furnished with his own furniture and occupied by the resident manager and his family. The "interest" which must be stated under this item is by the express language of the item limited to an interest "in any property or obligation" of the issuer and persons liable with respect to the securities called for deposit. The receipt of remuneration in connection with insuring the premises does not fall within this category, and the evidence with regard to the president's apart-

²"Original issuer" is defined by the rules of the Commission as the issuer of the securities called for deposit, whereas "issuer" is the issuer of the certificates of deposit.

³The treasurer of the respondent also admitted that the statement contained errors inasmuch as additional invoices had been received after the statement was sent out.

ment does not indicate more than that prior to 1931 he had this apartment at his disposal without rent.

Item 25 calls for a statement of the nature of any business or professional connections which counsel acting for the issuer in connection with the call for deposits, has had with the original issuer or with any person who was a principal underwriter of the securities of the original issuer. The answer given is "none." The answer is untrue in that such counsel are the attorneys of record for the original issuer, namely, Tudor Corporation, in the action of foreclosure brought by the trustee, as well as in the action for an accounting discussed above.

A brief explanation of "the reasons why the deposit of securities is desired" is required under Item 26. Registrant has answered as follows: "The original issuer defaulted in payment of taxes on the mortgaged property; the trustee bank placed the property in receivership and brought foreclosure proceedings. Securities were called for deposit in June, 1932, to enable the committee to protect the interests of bondholders." Counsel for the Commission submits that the answer is untrue and misleading, in that the real purpose of the proceeding is to convert the fixed interest bearing bonds at 5 percent into income bonds, so that control of the property by the Commonwealth Management Corporation, a wholly owned subsidiary of Commonwealth Bond Corporation, might be perpetuated during the life of the voting trust to be established for ten years pursuant to the reorganization. A determination of this question would necessitate a finding of fact as to the good faith of the persons controlling respondent in connection with the reorganization. It is true that evidence was adduced impugning this good faith. But without in any way foreclosing the question of the real purpose behind the call for deposits, as it might subsequently arise in criminal or civil proceedings, a deficiency in respect to the purpose of the calling of these securities for deposit does not appear to have been clearly established.

Item 36 calls for: "A brief statement of the provisions of the deposit agreement and all other agreements with respect to any fees, and expenses paid or to be paid, directly or indirectly, in any way related to the deposit agreement, to the securing of deposits thereunder, or to any plan of readjustment or reorganization in connection therewith."

The answer omits to state that the deposit agreement contains a provision that in case all the bonds are not deposited and the total distributive value of bonds deposited is less than the bid price, the committee shall have the right to pay the difference, and in return for such payment to be deemed a depositor of the number

of bonds not deposited whose total distributive value is equal to such payment, subject to the right of nondepositing bondholders to come in under the plan upon certain conditions within thirty days after the foreclosure sale. The application of this provision might result in a benefit to Commonwealth Bond Corporation which would be equivalent to an indirect fee. The provision should, therefore, have been summarized.

Item 37 calls for a statement by whom the fees of the issuer and its members and counsel and of the depository are to be determined, together with a brief statement of the nature of any business or professional connections the party determining such fees has or has had within five years with the issuer, the original issuer, and any person who was a principal underwriter of the securities of the original issuer. Item 63 calls for a similar statement as to fees connected with the plan. The answer in each case states that the fees are to be determined by the Commonwealth Bond Corporation Committee, which is the issuer, and that such issuer was the principal underwriter of the securities called for deposit. As explained in connection with Item 12 above, the Commonwealth Bond Corporation is not to be regarded as the underwriter of the securities of the original issuer.

Counsel for the Commission contends that the answer is untrue in that it omits to state further facts of the relationship of the respondent to the original issuer. These facts are in brief: (1) That the original issuer is managed by the Commonwealth Management Corporation, a wholly owned subsidiary of the respondent having officers identical with those of the respondent, which management corporation received gross receipts of \$10,384.69 from January 26, 1930, to May 27, 1932, and still holds a large cash balance belonging to the original issuer; (2) that the Hamilton Brokerage Co., another wholly owned subsidiary of the respondent having officers identical with those of the respondent, has placed all insurance for the original issuer, the gross return from which has been \$1,514.96; (3) that the respondent has received \$832.30 as a service charge in regard to the property of the original issuer; (4) that the respondent owns the majority of the stock of the original issuer; (5) that the officers of the respondent and the original issuer are the same; (6) that the president of the respondent had a rent-free apartment in the apartment house of the original issuer.

Item 37 calls for three things: (1) The person determining the fees and the funds out of which they are to be paid; (2) a specific statement that the fees are not to be determined by an independent person, if such be the case; (3) a statement of the business and professional connections that the person determining the fees may

have had with the issuer, the original issuer and the underwriter of the securities called for deposit during the last five years. Item 63 is substantially to the same effect. The third matter required to be stated by Items 37 and 63 seems obviously to call for the disclosure of the relationship referred to as regards some person other than the issuer, the original issuer or the underwriter of the securities called for deposit. This third matter is not applicable to situations where the person determining the fees is either the issuer, the original issuer or the underwriter of the securities called for deposit. In such an event answers responsive to the first and second matters would be sufficient. But obviously the facts above referred to should be disclosed by the respondent. Other questions in the registration statement, however, must be relied upon to uncover relationships of the character noted by counsel for the Commission, and the items in the registration statement seem wholly adequate for such a purpose even to the extent of unravelling relationships concealed beneath the artificial curtain of subsidiary companies.

Item 38 calls for a brief statement of every material contract directly or indirectly affecting the deposit agreement or any plan connected therewith. Item 61 also calls for such information with regard to the plan or the securities to be issued thereunder. To each the registrant has answered "none." The answer omits to state that a commitment for a loan had been obtained by the committee to be advanced to the committee as reorganization managers for the purpose of providing cash for the fulfilment of the foreclosure bid. The existence of such a contract was of course material as it would give some indication to the bondholders of any result in cash to them of the reorganization. The president of respondent testified that it did not secure a loan commitment until December 20, 1933, after the effective date of the registration statement. However, in an affidavit dated December 16, 1933, the vice president of the Commonwealth Bond Corporation stated that he had negotiated for a loan on September 15, 1933, and that the commitment would not be available if the sale were adjourned beyond December 20, 1933. The answer is also deficient in failing to mention a contract, of which there is evidence, between the Commonwealth Bond Corporation and the Underwriters Trust Co. providing for remuneration of the latter for its services as depository under the depository agreement.

Item 41 provides: "State the nature of any business and professional connections between each depository and the issuer and any member thereof."

The answer thereto is: "None."

It is established that the depository was acting as depository for the Commonwealth Bond Corporation in a number of other de-

faulted bond issues. The existence of such a course of dealing and relationship is not disclosed by the issuer.

Under Item 52, registrant is required to give a brief statement of essential features of the plan not called for in previous items and the reasons for adopting the particular plan. The answer contains the statement that: "The officers of the new corporation shall serve without salaries and voting trustees serve without compensation." The new corporation to hold the property, Tudor Hall, Inc., was organized in January of this year. Its officers are identical with those of the Commonwealth Bond Corporation, the Commonwealth Management Corporation and the Hamilton Brokerage Co. The evidence justifies the conclusion that the officers of the new company, in connection with the Management Corporation and the Brokerage Company, will in fact receive compensation as officers of the Management Corporation and the Brokerage Company. In view of the identity of management among the several companies such information was called for.

Item 58 requires a statement of the securities of the original issuer held by the reorganization managers as of a date within 20 days prior to filing of the statement and as of a date approximately a year prior thereto. The answer states the Commonwealth Bond Corporation owned as of November 1, 1933, and for a year prior thereto, \$800 principal amount of the securities called for deposit. In fact the Commonwealth Bond Corporation owned 5,858 shares, being a majority of the common stock of the original issuer, Tudor Corporation. The record also establishes that the amount of bonds held by the corporation was \$7,800 instead of \$800.

The alleged deficiencies as to Items 61 and 63 are disposed of by the discussion above.

Any other plan of readjustment or reorganization known to have been proposed must be mentioned under Item 64. The answer disclaims knowledge of any such plan. The evidence establishes that respondent knew that a rival committee was proposing a plan. In fact it had issued a circular letter, criticizing the "proposed plan of reorganization", of such committee. It is true that the rival committee had only, as far as was shown, given a general indication of the nature of its plan. But at least some reference to such plan should have been made in answer to this item. See *Federal Trade Commission v. Howard*, supra.

Item 65 has been discussed in connection with Item 11 above. A footnote to this item says that no statement is available subsequent to the operating statement for the year 1931 attached as an exhibit. A similar explanation is submitted in paragraph 18 of the prospectus. The evidence establishes that all books and records of the

Tudor Corporation from its inception, have been under the control and possession of the Commonwealth Bond Corporation and its officers. Income tax returns have been filed to date. It would have been a simple matter for respondent to prepare a balance sheet and profit and loss statement up to date. The claim that no such statement was "available" is, in substance, untrue.

The contention is made that the prospectus in regard to paragraphs 1, 4, and 12 is misleading in that it refers to a plan for distributing cash proceeds of the new mortgage and implies that the cash returned to depositing bondholders would be more than that of nondepositing bondholders, whereas the evidence establishes that no cash would be available for distribution to those who deposited. These statements are rather in the nature of prophecies than statements of present fact. But a prophecy known to be untrue as of the time it is made is to be regarded as an untrue statement of fact inasmuch as it misstates the mind of the person making the prophecy. The evidence certainly indicates that the president of the respondent held little hope as to the possibility of any cash return to the depositing bondholders. Thus optimism of an unwarranted nature is reflected in these statements. But the evidence is not sufficient to establish actual unbelief as of the time these statements were made. In any event, the developments which have intervened will make repetition of these statements as of the time of a subsequent effective date following the present stop order clearly deficient.

Paragraph 9 of the prospectus states that a copy of the plan of financing is on file with the Underwriter's Trust Co. Such plan is not on file.

Other deficiencies in the prospectus need not be specifically noted since they merely reflect those heretofore noted as to the registration statement proper.

A stop order must thus issue in accordance with the above findings.

STOP ORDER

This matter coming on to be heard by the Commission on the registration statement of Commonwealth Bond Corporation as Committee for First Mortgage 5 percent Sinking Fund Gold Bonds of Tudor Corporation, of New York City, N.Y., after confirmed telegraphic notice by the Commission to said registrant that said registration statement contains untrue statements of material facts and fails to state certain material facts required to be stated therein or necessary to make the statements therein not misleading and upon the evidence received in support of the allegations made in the notice of hearing duly served by the Commission on said registrant, and the Commission having duly considered the matter and finding

that said registration statement fails to comply with the requirements of the Securities Act of 1933 and the rules and regulations promulgated thereunder in the particulars herein ordered to be supplied and corrected, and being now fully advised in the premises,

It is ordered, That the effectiveness of the registration statement filed by Commonwealth Bond Corporation as Committee for First Mortgage 5 percent Sinking Fund Gold Bonds of Tudor Corporation, of New York City, N.Y., is hereby suspended until such time as said registration statement is amended to supply the information required under Items 11, 12, 14, 17, 25, 36, 37, 38, 41, 52, 58, 61, 63, 64 and 65 of form D-1, Parts I and II, and until amended to conform with the requirements of Article 16 of the Rules and Regulations under the Securities Act of 1933, promulgated July 6, 1933, and until amended to conform to the requirements of Section 10 of the Securities Act of 1933.

This order is to remain in full force and effect until the amendments herein indicated have been made and the Commission shall have so declared.

IN THE MATTER OF
UNITY GOLD CORPORATION

OPINION, FINDINGS, AND STOP ORDER IN PROCEEDING UNDER SEC. 8 (d) OF
THE ACT OF CONGRESS APPROVED MAY 27, 1933

File No. 2-411. Order, June 27, 1934

SECURITIES ACT, 1933—REGISTRATIONS—PROMOTER'S FEES (ITEM 39)—STOCK PAYMENT BY INDIRECTION—WHETHER BROKER'S COMMISSIONS.

Answer that no payments had been made by issuer to promoters was false because, in fact, the issuer had issued shares, which had five times the value of those issued to the vendor, to the issuer's organizers, who sought to justify the payments as broker's commissions paid by the vendor, but which payments the evidence shows to have been for promoter's services to the issuer.

SECURITIES ACT, 1933—REGISTRATIONS—STOP ORDERS—FALSE INFORMATION VOLUNTEERED.

False information volunteered may constitute a material misstatement and hence give grounds for the issuance of a stop order.

SECURITIES ACT, 1933—REGISTRATIONS—IMMATERIALITY IN A STOP ORDER PROCEEDING OF DISCLAIMER OF KNOWLEDGE AS TO TRUTH OF STATEMENT—CORRECTION UPON AVAILABILITY—ENSUING STOP ORDER—SUBSEQUENT CORRECTION.

In proceeding under Section 8 (d), the truth or falsity of the statement is in issue regardless of the good faith of the parties except where information is expressly called for only "if known", as in Item 28 (*Charles A. Howard, et al.*, March 21, 1934, 18 F.T.C. 626). Regardless of whether unavailability might excuse omission, correction upon availability is clearly called for, and, if a stop order is to issue, subsequent corrected statements must be made in view of available information at such later date (*Commonwealth Bond Corporation, et al.*, May 23, 1934, 18 F. T. C. 635).

SECURITIES ACT, 1933—REGISTRATIONS—BALANCE SHEETS (ITEM 54)—INTANGIBLES—COST OF MINING RIGHTS—PROMOTER'S FEES.

Whether or not promoter's fees should be deemed organization expense or a capital asset, it is clear they cannot be treated as part of the cost of property but must be segregated.

SECURITIES ACT, 1933—REGISTRATIONS—BALANCE SHEETS (ITEM 54)—INTANGIBLES—COST OF MINING RIGHTS—CONCURRENT "DONATION" BACK IN SAME TRANSACTION.

Shares transferred to the vendor but concurrently "donated" back to the issuer cannot be regarded as part of the cost of property. Such bookkeeping transactions, which create a false valuation of the property as well as inflating capital surplus, do not meet the standards of truthfulness demanded by the Securities Act, regardless of whether such stock thereby becomes true treasury stock or not.

SECURITIES ACT, 1933—REGISTRATIONS—BALANCE SHEETS (ITEM 54)—INTANGIBLES—COST OF MINING RIGHTS—PAR VALUE AS COST FIGURE.

To value stock exchanged for property at par when public sales show fair valuation to be less is untrue and misleading, inasmuch as cost should reflect the consideration paid.

SECURITIES ACT, 1933—REGISTRATIONS—BALANCE SHEETS (ITEM 54)—INTANGIBLES—COST OF MINING RIGHTS—PROSPECTIVE VALUE.

Attempt to justify the total valuation as "prospective value" is indefensible because (1) balance sheet figures purport to represent cost to the registrant, and (2) value of property acquired, assuming no external indicia of its value, must be its present value and bear a substantial relation to the value placed thereon in transactions surrounding the purchase, which the claimed figure did not. The entry as cost of such a figure, which increased 30,000 percent the cost to the vendor, would be untrue and misleading.

SECURITIES ACT, 1933—REGISTRATIONS—BALANCE SHEET ENTRY FOR CAPITAL STOCK (SCHEDULE 8 OF ITEM 54)—NATURE AND AMOUNT OF CONSIDERATION RECEIVED FOR CAPITAL STOCK.

Registrant has omitted part of such information, and in other instances the information given would be untrue in view of conclusion reached above.

SECURITIES ACT, 1933—REGISTRATIONS—PROSPECTUS.

Corresponding statements in the prospectus are found to be untrue and misleading.

Mr. Richard P. Whiteley, Mr. Harold H. Neff, and Mr. Bernard D. Cahn for the Commission.

Mr. Guilford S. Jameson, of Washington, D. C., for registrant.

OPINION AND FINDINGS OF THE COMMISSION

This is a proceeding for the issuance of a stop order under Section 8 (d) of the Securities Act of 1933 suspending the effectiveness of respondent's registration statement which was filed December 28, 1933, on Form A-1, and became effective, after amendment, on March 9, 1934. After confirmed telegraphic notice, as prescribed by Section 8 (d), a hearing was held before an examiner of the Commission, at which respondent was represented by counsel.

The contention is that the registration statement includes untrue statements of material facts, and omits to state material facts required to be stated therein and necessary to make the statements therein not misleading, with regard to Items 39, 45, and 54. This contention extends also to the prospectus insofar as it contains information relating to the subject matter of these items. The examiner has found that there is no deficiency with respect to Item 43, which was also in issue, and counsel for the Commission have made no exception to this finding of the examiner. The Commission also finds no reason to disturb this finding of the examiner, and thus the questions requiring determination relate only to Items 39, 45, 54, and the corresponding statements in the prospectus.

On July 15, 1931, the Katinka group of mining claims in Cripple Creek, Colo., was acquired by J. L. King under a royalty lease for three years. King also acquired an option to purchase the property before the expiration of the lease for \$15,000, royalties to apply on the purchase price. The stated consideration for this option was one dollar and the acceptance and performance of the lease. King thus acquired the use and control of the claims at no expense other than the usual obligations to operate the property and to pay royalties on the proceeds. Thereafter King organized the Industrial Gold Mining Company (hereinafter referred to as the Industrial Company) and assigned to it the lease and option in consideration of the issuance to him of 2,000 shares of stock having a part value of \$1 per share.

The Industrial company expended about \$5,560 in developing the property, but produced no gold and hence paid no royalties. Desiring further capital, King published an advertisement in the Denver Post which was answered by R. L. Maxwell. Negotiations ensued, culminating in the assignment of the lease and option to the Unity Gold Corporation, the present respondent, a corporation organized under the laws of Colorado. The alleged deficiencies in the registration statement arise from the description of this transaction and the significance to be attached to it as determining the cost of the property.

Item 39 calls for "the name and address of each promoter to whom any amount has been paid within two years preceding the filing of the registration statement * * * together with the amount thereof in each instance, and the consideration for each payment * * *" The answer of registrant states that "no payments have been made by the issuer to promoters", but goes on to explain that in the transaction whereby registrant acquired the Katinka claims "for \$5,000 and 599,995 shares of the common capital stock of Unity Gold Corporation, it was stipulated, in the contract dated October 4, 1932, * * * that the Industrial Gold Mining Company would immedi-

ately donate and deliver to the treasury" of respondent 475,000 of the shares received in payment, and that "it was also requested" that the remaining 124,995 shares "were to be issued in the names of various persons and among those named was Robert L. Maxwell, of Denver, Colo., in whose name 109,435 shares were issued." The answer concludes: "The present officers and directors were elected in August, 1933, and have no knowledge as to what consideration, if any, was paid by R. L. Maxwell for the 109,435 shares which were issued in his name at the request of the Industrial Gold Mining Company."

It is contended that the answer is untrue in that the registrant itself paid Maxwell and others the 109,435 shares in consideration of promotional services rendered by Maxwell and these others to the registrant.

Item 45 requires full particulars as to the interest of every director, principal executive officer, underwriter, and every stockholder named in Item 28,¹ in any property acquired or proposed to be acquired not in the ordinary course of business within two years preceding the filing of the registration statement. Under Item 28 Maxwell is listed as a record holder of more than 10 percent of the stock of the registrant, and W. N. Rockwell, A. M. Kearns, M. Morris, C. A. O'Leary and E. J. Williams are mentioned among the beneficial owners of shares included in this holding. The answer to Item 45 states that none of the persons of the class mentioned in Item 28 had any known interest in the Katinka claims which property is proposed to be acquired with part of the proceeds of the issue. There follows a statement substantially the same as that under Item 39 with regard to the terms of the contract of October 4, 1932, referring to a request by the Industrial company for the issue of 109,435 shares in Maxwell's name, and a disclaimer of any knowledge regarding consideration moving from Maxwell.

The truth of this answer is attacked on the ground that the transfer of the 109,435 shares was not at the request of the Industrial company but was made by registrant for promotional services with full knowledge as to the nature of the transaction.

Maxwell testified that 109,435 of the shares were divided between himself and Rockwell, A. M. Kearns, G. C. Kearns, Morris, B. A. Evans, C. A. O'Leary, and Williams, of whom the first five together with him "were the organizers of the Company", and that the Industrial company did not owe any of these organizers any sums of money. There was also introduced in evidence an agreement between Maxwell and two of the organizers providing that 71,685 of the shares stand-

¹ Item 28 calls for a list of stockholders owning 10 percent of record and/or beneficially, if known, of any class of stock of the issuer or more than 10 percent in the aggregate of the issuer's outstanding stock.

ing in Maxwell's name should be equally divided between them (when released from the pledge securing the cash payment for the transfer of the Katinka claims) "in consideration of the efforts of said A. M. Kearns, W. N. Rockwell, and R. L. Maxwell in the promotion of said Unity Gold Corporation". He also testified that there was an oral agreement for division of the shares prior to the transfer of the property, and that upon the transfer his beneficial interest was in 23,895 shares. Furthermore, King, when asked whether consideration was paid by Maxwell to the Industrial company for the issuance to him of the 109,435 shares, replied: "The Industrial Gold Mining Company had nothing to do with the stock which was issued in the Unity Corporation."

Respondent's position is that the payment was in the nature of a broker's fee paid by the Industrial company out of the proceeds of the sale. Maxwell testified that he considered himself as acting for both parties and had reached some sort of agreement with King regarding a reward for his services, but this indefinite testimony is denied by King, who stated that Maxwell never worked for him. Moreover, it is unusual to say the least to regard as a broker's fee a sum over five times as large as that received by the vendor itself for the property. Indeed, the evidence impels irresistibly to the conclusion that most, if not all, of the 109,435 shares were paid as promoter's fees, and that they should have been disclosed in connection with Item 39.

Item 45 calls merely for a statement of the interests of certain classes of persons in certain property acquired by registrant. If respondent had confined its answer to its statement that none of the persons concerned had any such interest, such answer might, so far as has been shown, be true. But since respondent volunteered the same misinformation contained in the answer to Item 39, regarding the purpose of the payment to Maxwell, the answer to Item 45 must likewise be deemed untrue. Though the registration statement may not call for certain information, such information being falsely given may constitute a material misstatement and hence give grounds for the issuance of a stop order.

The disclaimer in answer to Items 39 and 45 of any knowledge as to the consideration paid by Maxwell for the shares issued in his name, which is sought to be explained by the fact that the present management of respondent was elected in August, 1933, even if the explanation were to be accepted, is immaterial for the purposes of the present proceeding. In a proceeding under Section 8 (d), the truth or falsity of the statement is in issue regardless of the good faith of the parties.² Independently of whether the unavailability

² This is the rule except as to information which is expressly called for only "if known", as in the case of Item 28, *Federal Trade Commission v. Howard*, 18 F. T. C. 626 (1934).

of information might warrant its omission from a registration statement without attendant liability, a prompt rectification when the information becomes available to the registrant is clearly called for. Furthermore, as to other deficiencies, later to be discussed, respondent's full knowledge cannot be questioned, and, if a stop order is to issue, any subsequent corrected statement must be made in the light of registrant's knowledge as of such later date. *Federal Trade Commission v. Commonwealth Bond Corporation*, 18 F. T. C. 635 (1934).

It follows that the answers to Items 39 and 45 are deficient.

Item 54 calls for balance sheets of the issuer as of the close of the last fiscal year, and, if that be more than 90 days past, as of a date within 90 days.³ The balance sheets submitted carry as "intangibles" the lease and option on the Katinka mining claims at \$605,047. This figure is broken down in Schedule 3 as follows:⁴

LEASE AND BOND, KATINKA GROUP		
Original cost:		
Cash -----	\$5,000.00	
599,995 shares of capital stock -----	599,995.00	
	\$604,995.00	
Additions: Abstract fees -----		52.00
		605,047.00

The contention is that the figure given for the cost of the Katinka lease and option is untrue in three respects: (1) It includes the 109,435 shares paid to Maxwell and the other promoters by registrant for services rendered to it; (2) It includes the 475,000 shares which were "donated" back to registrant in the same transaction; (3) The shares included in the cost figures are taken at the par value of \$1 per share whereas their fair value, as shown by sales, was much less.

First. The finding with regard to Items 39 and 45 largely determines the question with regard to the inclusion of the 109,435 shares in the cost of the mining rights. Promoters' fees, which a substantial portion of these shares represent, cannot be deemed to be so intimately connected with the purchase of the property as to justify their inclusion in the cost of the latter without, at least, segregating them. Rather, they represent expenditures in the nature

³ The registration statement was filed with balance sheets as of December 31, 1932, and September 30, 1933. An amendment filed February 17, 1934, submits balance sheets as of December 31, 1932, and December 31, 1933, upon the basis of which the question of deficiencies is considered. With regard to intangibles, however, the amendment makes no change, and, since no schedule is appended, reference must be had to the schedule submitted with the balance sheets previously filed.

⁴ Instruction 3 with reference to intangibles calls for "a comparative statement of the cost and ledger value of each class of intangible since January 1, 1922, and a complete explanation of the differences, if any."

of organization expenses for which a separate entry is expressly required by Form A-1. Or they might be entered, with an appropriate specification, under the item "other intangibles" there provided. Accounting theory and practice reveal some disagreement as to whether such expenses are properly to be regarded as representing capital assets or should be treated as a deferred or prepaid expense, but there is no disagreement that expenses in the nature of promoters' fees should be listed separately from expenditures representing the consideration paid for physical property. See Hatfield, Accounting (1927) 66 et seq.; Paton, Accounting (1930) 709; Paton and Stevenson, Accounting (1928) 433-6; Kester, Advanced Accounting (1933) 395. See also Interstate Commerce Commission, Classification of Investment in Road and Equipment of Steam Roads, 36, and Uniform Systems of Accounts for Telephone Companies, 39.

Second. The cost figures of the registrant include as an element of cost in the acquisition of the Katinka lease and option the 475,000 shares that were "donated" back to the registrant by the Industrial company.

The cost of this property to the registrant was stated to be \$5,000 cash and 599,995 shares of stock entered at their par value of one dollar. For the reasons above stated, the 109,435 shares issued to Maxwell and his associates were improperly included as an element of the cost of the lease and option, however rightly they might have been capitalized as a promotion expense. There remains \$490,560, representing 490,560 shares of which the 475,000 above mentioned constitute the major portion.

That these 475,000 shares could not be regarded as being part of the cost of the lease and option on the ground that the registrant parted with these shares in order to obtain the property, seems hardly open to question. The "donation" back to the registrant of these shares was concurrent with the purchase of the property itself. The Industrial company by the terms of the purchase contract had no *jus disponendi* at any time over these shares. No evidence was adduced to show that even the form of transfer and retransfer was followed. That it was merely a bookkeeping transaction is evidenced by the records of the Industrial company itself, for one need only turn to the minutes of this company to find the president reporting that "the deal as closed, consummated the sale of all the assets of the Industrial Gold Mining Company to the Unity Gold Company (sic) for the sum of \$5,000 in cash and 15,560 shares of capital stock of the Unity Gold Company, par value \$1 per share."⁵

⁵ This is the version in the minutes of the Company's meeting on August 18, 1932. Upon the formal ratification of the deal, minutes purporting to describe a meeting on October 3, 1932, set out the contract, naming \$5,000 and 599,995 shares as the consideration.

The purpose of a transaction of this type—pretending to a transfer and retransfer of capital stock as between purchaser and vendor—is primarily to attempt to make the stock fully paid and non-assessable so that thereafter it can be sold as such at any price without making purchasers of the stock liable to the corporation's creditors.⁶ See *Buck v. Jones*, 18 Colo. App. 250, 70 Pac. 951 (1902); *Spier v. Bordelau*, 20 Colo. App. 413, 79 Pac. 332 (1905); *Clinton Mining and Mineral Co. v. Jamison*, 256 Fed. 577 (C. C. A. 3d. 1919). It is for this reason that some accounting authorities, though admitting that entries of the type described are untruthful in principle, have been led to condone the practice. The truthful entry—the making of a credit for the donation to the overvalued property account instead of to capital surplus—would admittedly be more nearly expressive of the property's value, “but such an entry is perhaps too frank an admission that the property was not worth the par of the stock, that the reacquired stock is not true treasury stock, and that subsequent purchasers are liable for the discount.” See 1 Finney, *Principles of Accounting* (1932) ch. 8, p. 16. See also Sunley and Pinkerton, *Corporation Accounting* (1931) 134, 137. The accountant, according to these authorities, is thus entitled to arrange his entries so as to support a legal fiction devoid of any reality and having the tendency to create values where none exist. But other authorities hold a different conception of the accountant's obligation. Thus Hatfield says: “But whether the presumption is in favor of valuing the property at the amount of stock originally given the vendors, or at the net amount retained by them, if it is established that the former figure would be an actual overvaluation, there is no excuse for such an incorrect representation in the accounts. The accountant should transcend the limitations under which courts labor”. Hatfield, *Accounting* (1927) 219. See also Paton, *Accounting* (1930) 712–717.⁷

The misleading consequences of such an entry are re-emphasized by the contra entries necessarily made to capital surplus as evidenced by the balance sheets of this registrant. These indicate a capital surplus arising out of this donation of 475,000 shares (together with a

⁶ “The purpose of such a transaction, of course, is to comply with the law and at the same time facilitate the raising of working capital by making the treasury stock more readily marketable. The conditions of the security market are such that it is usually difficult to issue common stock at par value. This is a more or less unreasonable state of affairs—and furnishes another illustration of the objectionable character of par value as employed in American corporate finance—but the fact remains that the investor is attracted by the offering of a discount. That is, the investor seems to believe that stock bought at a discount is a bargain.” Paton, *Accounting*, (1930) p. 713.

⁷ Expert testimony was also introduced in evidence to this effect.

subsequent donation of 50,000 shares by Maxwell and other recipients of the 109,435 shares).⁸

This capital surplus,⁹ giving to the uninitiated a conception of prosperity, is as non-existent as the \$475,000 added to the property account by the transfer and retransfer above described.

In behalf of respondent's contention that the sum stated to be the cost of the property could include shares "donated" by the vendor back to the registrant, counsel rely on Colorado cases which stand for the proposition that shares issued in exchange for property will be regarded under Colorado law as fully paid despite the fact of a concurrent donation back to the issuing company of a substantial portion of these shares. *Buck v. Jones, supra; Spier v. Bordelau, supra.* These cases involved suits by creditors against stockholders based upon the theory that the stock acquired in such a fashion was not full paid. The court held that such a transaction, concerning property as to whose value there was no independent evidence, represented a valuation put upon the property by the directors at the total amount of the stock, which valuation would be presumed to have been honestly made, and hence would not be upset unless some evidence were available to overcome the presumption. The simultaneous donation back—a fact scarcely noticed in these opinions—does not seem to have been regarded as evidence sufficient to over-

* The figures given are:	December 31, 1933	December 31, 1932
Surplus—		
Capital surplus, arising from stock donated to corporate treasury.....	\$450,262.35	\$448,802.50
Profit and loss charges deducted.....	11,463.68	5,582.48
	438,798.67	443,220.02
These are broken down as follows in "Detail 'S'":		
1932 Donated stock—475,000 shares.....		475,000.00
Less: Discount on stock sold to 12/31/32.....		24,748.75
		450,251.25
Less: Discount on stock subscriptions unpaid.....		1,448.75
		448,802.50
1933 Donated stock—50,000 shares.....		50,000.00
Discounted on stock repurchased.....		17.00
		498,819.50
Less: Discount on stock sold.....	38,777.15	
Discount on stock subscriptions unpaid.....	4,780.00	
Bonus on loan-stock issued 5,000 shares.....	5,000.00	
	48,557.15	
		450,262.35

⁸ Exclusive of that arising from the 50,000 shares later donated by Maxwell and his associates, as to which no issue was raised as to whether they represented an actual increment properly included in surplus.

come the presumption of honest valuation. Many courts, though adhering to the doctrine that the valuation thus placed by the directors on the property acquired would presumptively be deemed to have been honestly made, have regarded substantial donations of stock so acquired by the vendor of property, when such donations were made concurrently with the purchase, as evidence that would raise a presumption of fraud or gross overvaluation sufficient to permit rejection of the directors' valuation. *Enright v. Hekscher*, 240 Fed. 863 (C. C. A. 2d. 1917); *Hasson v. Koeberle*, 180 Cal. 359, 181 Pac. 387 (1919); *Libby v. Tobey*, 82 Me. 397, 19 Atl. 905 (1890); *Honeyman v. Haughey*, 66 Atl. 582 (N. J. Ch. 1906); *Douglass v. Ireland*, 73 N. Y. 100 (1878); *Blake v. Griswold*, 103 N. Y. 429, 9 N. E. 434 (1886); *Atwell v. Schmidt*, 111 Ore. 96, 225 Pac. 325 (1924). With the question of whether or not stock reacquired under these circumstances is true treasury stock and hence is to be regarded as full paid and nonassessable, this Commission in this case has no concern; but, under the standards of truthfulness demanded by the Securities Act, such an entry cannot be regarded as otherwise than untrue and misleading.

Third. It remains to be considered whether the 15,560 shares, constituting the purchase price after elimination of the promoters' shares and donated shares, can properly be taken at their par value of \$1 each in determining the cost of the property to the registrant. This appears to be another situation where principles of accounting have made some concession to wide-spread practices which are concededly deceptive except insofar as their common acceptance deters investors and creditors from the reliance which is theoretically justified. Stock issued in payment for property is frequently carried at par for purposes of determining the value of such property. Where, however, there is evidence that the stock is actually worth substantially less than par, accounting authorities for the most part agree that an appropriate discount should be made. See 1 *Finney op. cit.*, Ch. 8, p. 11; 2 *id.* Ch. 38, pp. 3-4; *Hatfield, op. cit.*, 72; *Paton, op. cit.*, 715. In the present case, the registration statement states in Item 38 that stock of the registrant was sold to the public at prices ranging from 15 to 75 cents a share, but no sales at \$1 per share have been shown to have been made. Under these circumstances, since the cost figures are to be taken as reflecting the consideration paid for the property, entering the stock at par would be untrue and misleading.

Registrant seeks to defend the entry of \$599,995 on the ground that it represented the "prospective value" of the lease and option. The difficulty with this position is twofold. First, registrant purported to state the cost of the property to it and not its prospec-

tive value,¹⁰. This cost is measured by what registrant parted with, which consisted of only 15,560 shares and \$5,000 cash for the property, and not 599,995 shares and \$5,000. These 15,560 shares cannot be contended to have a cash value of \$599,995. Second, if we assume that there is no evidence as to the actual value of the shares actually given for the property and also assume that they had no ascertainable market value as of the time of the purchase, it is arguable that the value of the consideration given for the property should be measured by the value of the property acquired and this latter figure then be stated as the cost of the property. But in such an event the value of the property must be an approximation of its value at the time of the transaction. The concept "prospective value", as the testimony indicated, bears no substantial relation to the value placed upon the property in the transactions surrounding its purchase. It had cost the vendor only \$2,000, paid not in cash but stock. Though about \$5,000 had been expended on the property, no gold had been produced. The sum of \$15,000 had still to be paid by July 15, 1934, in order to exercise the option.

An attempt was made to show that the valuation placed upon the property had some engineering validity. Paul A. Gow, a mining engineer, a graduate of the Colorado School of Mines, and a member of the American Institute of Mining Engineers, who had had nearly 27 years experience in examining copper, gold, silver, lead, and zinc mines in Colorado and other western States, and had worked as a "miner" in the Cripple Creek region where the Katinka claims are located, testified that he had examined the Katinka claims in August, 1932, at the request of the officers of respondent and the stockholders of the North Butte Mining Company through which Unity was contemplating the financing of the transaction. He testified that he had verbally reported to the officers of Unity that, on development, the property would prove very valuable and that \$605,000 was a conservative figure for its "prospective value". He said that properties immediately adjoining to the north and south had each produced over \$10,000,000 worth of gold at the old rate of \$20 per ounce.

The testimony is not very compelling. No written report was made by Mr. Gow. In his examination of the property, which lasted five days, no assays were made. He took "three or four" samples.

¹⁰ This is demonstrated not only by the form of Schedule 3, but Instruction 3, which pertains to the item in dispute, expressly calls for the submission of a comparative statement of the cost and ledger value of each class of intangibles since January 1, 1922, and a complete explanation of the difference, if any.

There was no "proven ore." Indeed, the basis for his valuation seems to have rested primarily upon deductions which, because of his familiarity with the district, he made from certain surface indications as to the presence of various phenolite and basalt dikes. But more than this, his estimate was only as to "prospective value", inasmuch as he admitted that there was no actual value capable of being attributed to a property of this character.¹¹ The term "prospective value", as used by this engineer, obviously affords no scientific basis for valuation and the use of such a figure to indicate the value of the consideration paid for the property and thus permit its entry as a cost figure cannot in the light of this testimony be permitted.

It is not amiss to notice that Gow was president of the North Butte Mining Company¹² which, a week after the contract between the Industrial company and the Unity, had obtained an option on 400,000 shares of the 475,000 shares of the donated Unity stock. This option was exercisable at prices ranging from 25 cents per share for the first 100,000 and 37½ cents per share for the next 100,000 to 75 cents per share for the last 100,000. Yet if Gow's estimate as to prospective value had any reality, at the time this contract was made there were outstanding only 125,000 shares as against property worth \$605,000. Despite the fact that the outstanding shares represented a prospective value of \$5 per share, the North Butte Mining Company allowed this opportunity to acquire shares of the same class at from 25 cents to 75 cents per share to expire.

Naturally it is difficult to arrive at any precise valuation for such a highly speculative venture as a lode mine possessing no proven ore. Any valuation must be based largely upon the good faith of the parties. But relevant to any such valuation is the evidence as to what experienced speculators were willing to give or take for the property. When under the guise of imputing "prospective value" to a mine, the valuation figures as the result of the transfer of the property are increased some 30,000 percent, "prospective value" loses all meaning, except that of a possible but not probable expectation of ultimate return. As the Supreme Court of California said in *Hasson v. Koe-*

¹¹ When asked whether it is possible for an engineer to ascertain the actual value of a gold or silver mining property, Gow replied: "In the case of placer deposits, gold occurring in alluvial deposits or gravel, it is possible to determine the value of a property within reasonable limits, by churn drilling or excavation by test pits or test holes, but in the case of lode mines and particularly in the case of Cripple Creek mines, it is absolutely impossible to determine values by sampling and know what that mine is really actually worth until it is worked out and the mineral has been—the metal has been sold and the mine is through, then you know what the mine is worth."

¹² Gow also acted as "consulting engineer" for the registrant in Washington, holding a power of attorney to represent the registrant before the Commission in connection with the present registration.

berle, supra, 181 Pac. at 389: "Nor do we see any reason why it would work any peculiar hardship upon a mining company, as distinguished from any other kind of corporation, to be required to take property in exchange for stock at what the incorporators honestly and intelligently believe to be its actual value. If it is true that there is a custom to fix mining shares at a purely arbitrary par value having no relation to the value of the assets taken therefor, that fact cannot alter the rule of law requiring that there be such a relation. . . . If, therefore, it is customary for mining corporations in this State to issue stock for property which has no relation to the par value of the stock so issued, we can likewise only express our regret and point out that it has in every case involved a clear infringement of our laws."

It follows that the answer to Item 54 is deficient.

A further deficiency is to be found in Schedule 8 of Item 54, which itemizes the balance sheet entry for capital stock. Instruction 16 sets forth the matter which this schedule is to contain, and it calls for a statement of the nature and amounts of all consideration received for its capital stock and other pertinent information. This information in instances has not been supplied, while in other instances the information given would be untrue in view of the conclusions reached above.

Deficiencies corresponding to those discussed are also contained in the prospectus which reflects the statements made in the registration statement and found to be untrue and misleading.

After conclusion of the hearings, registrant submitted further amendments which it believed satisfied the objections of the Commission. It is sufficient to note with reference to these amendments that they fail to correct the deficiencies set forth.

A stop order must accordingly issue.

STOP ORDER

This matter coming on to be heard by the Commission on the registration statement of Unity Gold Corporation, 1606 Pioneer Building, St. Paul, Minn., after confirmed telegraphic notice by the Commission to said registrant that said registration statement contains untrue statements of material facts and fails to state certain material facts required to be stated therein and certain material facts necessary to make the statements therein not misleading, and upon the evidence received in support of the allegations made in the notice of hearing duly served by the Commission on said registrant, and the Commission having duly considered the matter and finding that said registration statement fails to comply with the requirements of the Securities Act of 1933 and the rules and regulations promulgated there-

under in the particulars herein ordered to be supplied and corrected, and being now fully advised in the premises:

It is ordered, That the effectiveness of the registration statement filed by Unity Gold Corporation of St. Paul, Minn., is hereby suspended until such time as said registration statement is amended to supply the information required under Items 39, 45, and 54 of Form A-1, and until amended to conform with the requirements of Article 16 of the rules and regulations under the Securities Act of 1933, promulgated July 6, 1933, and until amended to conform to the requirements of Section 10 of the Securities Act of 1933.

This order is to remain in full force and effect until the amendments herein indicated have been made and the Commission shall have so declared.

DECISIONS OF THE COURTS¹

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

FEDERAL TRADE COMMISSION v. HOBOKEN WHITE LEAD & COLOR WORKS, INC.²

(Circuit Court of Appeals, Second Circuit. November 20, 1933)

FEDERAL TRADE COMMISSION ACT, SECTION 5—ENFORCEMENT OF ORDERS—DECREE OF COURT—VIOLATION—ORGANIZATION AND USE OF NEW, SUBSIDIARY CORPORATION.

In proceeding to punish New Jersey corporation for contempt for violating order to cease sale in interstate commerce of paint material not complying with conditions stated in order, it was no defense that respondent organized New York corporation to which it sent paint and which forwarded material to respondent's customers (15 USCA sec. 45).

FEDERAL TRADE COMMISSION ACT, SECTION 5—ENFORCEMENT OF ORDERS—DECREE OF COURT—VIOLATION—ORGANIZATION AND USE OF NEW, SUBSIDIARY CORPORATION—SHIPMENTS TO, BY RESPONDENT, FOR LABELING, AND DELIVERY TO CUSTOMERS—VENDOR STATUS OF RESPONDENT.

Manufacturing corporation's shipping of paint material to subsidiary in another State for labeling of containers and delivery thereof to customers held sale and delivery by manufacturing company in interstate commerce, as respects violation of cease and desist order.

¹ The period covered is that of this volume, namely, June 19, 1933, to Apr. 23, 1934. During such period, three court decisions, without opinion, should also be noted as follows:

U. S. ex rel Cubberley v. F. T. C. In this proceeding in the District Supreme Court, the court, at the instance of petitioner, issued a rule requiring Commission to show cause why writ of mandamus should not issue, compelling it to issue formal complaints in proceedings pending before it, based on lease agency and lease license contracts, entered into by the large oil companies with retail gasoline dealers, or to rule immediately upon and make public its opinion concerning the legality of such agreements. Commission in its answer and return, among other things, alleged that investigation in the premises had not been completed, it had not yet had occasion to decide whether or not formal complaints should issue, and the petition showed on its face relator was seeking to have the court compel the Commission to take action relative to matters within its statutory discretion, and therefore a matter upon which mandamus could not lawfully operate. Commission's petition was sustained and rule discharged on Aug. 11, 1933.

Garment Mfrs. Ass'n, Inc., et al. v. Hugh S. Johnson, Administrator, etc., Federal Trade Commission and others. In this suit in the District Supreme Court, complainants sought to restrain General Johnson, as Administrator of the National Recovery Administration, the Commission (because empowered under sec. 3 (b) of the National Industrial Recovery Act (see p. 781, *infra*), to issue cease and desist order against violators of the provisions of such statute, and the codes approved thereunder), and others from enforcing as against complainants the provisions of the Code of Fair Competition for the Coat and Suit Industry, as approved Aug. 4, 1933, by the President, on the ground that the statute was unconstitutional, and wage scales and classifications imposed placed complainants in the New York area at a serious competitive disadvantage with manufacturers in the Baltimore area. Such suit was dismissed without prejudice, Feb. 8, 1934.

Federal Trade Commission v. Maison Pichel. In this proceeding the Commission sought and secured a permanent injunction on Feb. 13, 1934 (following a temporary restraining order on Feb. 6), in the District Court for the Southern District of New York restraining defendant, importer of wines and liquors, from representing that the Commission had passed upon the merits of, or given approval to, an issue of \$100,000 of preferred and common stock, for which registration statement had been filed.

² Reported in 67 F. (2d) 551. The case before the Commission is reported in 12 F. T. C., 495.

FEDERAL TRADE COMMISSION ACT, SECTION 5—ENFORCEMENT OF ORDERS—DECREE OF COURT—VIOLATION—ORGANIZATION AND USE OF NEW, SUBSIDIARY CORPORATION—INTERSTATE TRANSPORTATION BY RESPONDENT.

Creation of new corporation for purpose of changing interstate character of transportation to intrastate commerce in effort to evade cease and desist order held ineffectual.

FEDERAL TRADE COMMISSION ACT, SECTION 5—ENFORCEMENT OF ORDERS—DECREE OF COURT—VIOLATION—CONTEMPT.

Disobedience of cease and desist order of Circuit Court of Appeals constitutes contempt within inherent power of court to punish.

FEDERAL TRADE COMMISSION ACT, SECTION 5—ENFORCEMENT OF ORDERS—DECREE OF COURT—BINDING EXTENT OF.

Decree of Circuit Court of Appeals that corporation cease and desist from certain unfair trade practices was binding on corporation throughout United States.

(The syllabus, with substituted captions, is taken from
67 F. (2d) 551)

Proceeding by Commission against Hoboken White Lead & Color Works, Inc. On motion to punish for contempt for failure to obey order to cease and desist. Motion granted.

Robert E. Healy, chief counsel, of Washington, D.C., for Federal Trade Commission.

Lewis, Garvin & Kelsey, of New York City, for respondent.

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges.
MANTON, *Circuit Judge*:

The Federal Trade Commission, acting under the authority of section 5 of the act of Congress approved September 26, 1914, 38 Stat. 717, 719 (15 USCA sec. 45), on June 10, 1929, served upon the respondent its order to cease and desist in a proceeding before the Commission entitled "In the matter of Hoboken White Lead & Color Works, Inc., Docket No. 1565."² This proceeding was based upon a complaint, issued February 19, 1929, [552] pursuant to the statute, which charged the respondent with the practice of misbranding and misrepresenting its paint materials and paint pigments, sold and transported in interstate commerce in violation of the act declaring unfair methods of competition to be unlawful. In the same proceeding, on January 19, 1931, this court upon consent of the parties, entered the following order:

"It is now further ordered, adjudged, and decreed, That the respondent, Hoboken White Lead & Color Works, Inc., its officers, agents, representatives, servants, and employees, cease and desist in the course or conduct of the sale of paint material or paint pigment in interstate commerce—

"(1) From using the words 'White Lead', or word or words of like import, upon the containers of, or with which to brand, label,

² See 12 F.T.C. 495, 503.

represent, advertise, or describe, any such paint material or paint pigment which contains less than 50 percent white lead, lead carbonate, or lead sulphate; and, if and when said paint material or paint pigment is not composed wholly of white lead or of lead carbonate or lead sulphate or of the two in combination, but contains white lead, lead carbonate, or lead sulphate as its principal and predominant ingredient to the extent of not less than 50 percent by weight of the product, from similarly using said words 'White Lead', or word or words of like import, unless immediately preceded in equally conspicuous form and color by a word or words clearly indicating that said paint material or paint pigment is not composed wholly of white lead.

"(2) From using the words 'Zinc Lead', or word or words of like import, upon the containers of, or with which to advertise, brand, label, represent, or describe any such paint material or paint pigment when said product is not in fact zinc lead or is not in fact wholly composed of zinc in combination with lead carbonate or lead sulphate."*

Service of a copy of this order was made January 21, 1931.

Since that time, it is charged, the respondent has directly and indirectly caused its paint materials and paint pigments to be sold and transported in interstate commerce, to wit, from the State of New Jersey to the State of New York, under brands and labels in violation of this order. It is established by affidavits that on March 26, May 7, July 3, September 28, and October 15, 1931, it sold and transported in interstate commerce, from New Jersey to New York, to retail paint dealers, in sealed containers, paint materials under various brands and labels affixed by respondent to such cans containing the paint and materials as follows:

One	<u>ELYSIAN</u>	Gallon
Contains	Master Painters	
Zinc White	NEW PROCESS	
White Lead	Z I N C L E A D	
Pure	Ground	
Linseed Oil	in	
	Pure Linseed Oil	
	The Paint With No Complaint	

Used for
Priming and
Finishing Coats
On Interior
and Exterior
Work

WHITE
Manufactured by

HoBoKEN WHITE LeAD & CoLoR WoRKS, Inc.

HoBoKEN, N.J.

.

* See 14 F.T.C. 711.

HOBOKEN WHITE LEAD

12½ lbs.

New Process

ZINC LEAD

Combination

Ground

in

Pure Linseed Oil

& COLOR WORKS INC.

.
New Process

ZINC LEAD

Combination

Ground

in

Pure Linseed Oil
.

It also established that the zinc lead product manufactured by the respondent in New Jersey, and which respondent caused to be marketed to and by the dealers in the State of New York was a paint material or paint pigment which was not in fact zinc lead nor was it in any way wholly composed of zinc in combination with lead carbonate or lead sulphate but consisted principally of barium sulphate, to wit, approximately 80 percent of pigment and contained only about 20 percent of zinc with a trace of lead.

On the labeled containers in which white lead was sold the words "White Leader" were [553] used as a brand and were printed in large and conspicuous letters. These are words of like import as the words "White Lead". They appear upon such brands and labels in the corresponding space occupied by the words "White Lead" in substantially similar labels and brands used on the containers of paint material which respondent marketed and distributed in commerce prior to the entry of the order of this court. The term "White Leader" was developed by the respondent merely by adding the letters "er" to "White Lead". The words "White Lead" used in the corporate name on the labels were printed in a conspicuous manner in much larger and heavier type than the balance of the words used in the corporate name.

In truth, the paint pigment and paint material as described upon these containers did not contain white lead, lead carbonate, or lead sulphate to the extent of 50 percent of the pigment or of the product nor did it contain white lead, lead carbonate, or lead sulphate as its

principal and predominant ingredient to the extent of not less than 50 percent of the weight of the product, but contained principally barium sulphate, to wit, approximately 61 percent of the pigment, and lithopone, to wit, approximately 27 percent of the pigment, with only a trace of lead and the content of zinc to the extent of approximately 10 percent of the pigment. Such product is of substantially the same composition as the paint pigment and paint material marketed and distributed by the respondent in interstate commerce under the term "White Lead" prior to the entry and service of the order to cease and desist. The lithopone is a compound ingredient consisting of approximately 30 percent zinc sulphide and approximately 70 percent barium sulphate.

After the entry of the order to cease and desist the respondent organized the Hoboken White Lead & Color Works, Inc., a corporation under the laws of the State of New York, while the respondent was a corporation organized under the laws of New Jersey. The paint was manufactured by the New Jersey corporation, sent to the New York corporation, which did not manufacture, but it placed the labels upon the containers and the paint material was sent forward to the customers in the same sealed container. The stockholders and officers of the New York corporation were the same as those of the New Jersey corporation. Its sole function was to deliver to retail merchants, under these false and fraudulent labels prohibited by the court's decree, the kind of paint referred to in that decree.

To violate the order of this court, it is essential that it be established that the sale of the paint material be found to be in interstate commerce. Soliciting agents, in the name of the New York corporation, took orders from retail dealers in New York for respondent's products which it delivered to the New York corporation by interstate transportation from its manufacturing plant in New Jersey, and the New York corporation delivered the product to the several retail dealers from whom orders had been procured. The respondent's agents, officers, and employees who organized the New York corporation and attempted to carry on the business in the manner described, are expressly enjoined by this court along with the respondent corporation. The respondent may act only through its officers, agents, and employees. Their acts are its acts when done in furtherance of respondent's business.

The answer filed expressly admits that the New York corporation was created by respondent's officers to deliver respondent's product, which respondent could not itself deliver in New York under the label "Zinc Lead", without violating the order of the court. It is apparent that the respondent transports its containers and false labels separately to the office of its subsidiary in New York

there to be attached and by this means they furnish to retailers a quality of merchandise which deceives the purchasing public. It is no defense that the interstate sale and delivery of respondent's produce under these unlawful labels is accomplished by means of a new corporation which the respondent created for that purpose. *Prang Co. v. American Crayon Co.*, 58 F. (2d) 715 (C.C.A. 3).

It is likewise clear that the respondent sells and delivers its product to the New York corporation in interstate commerce. The New York corporation is used merely as an instrumentality of the respondent and makes delivery for it. The sales and the delivery of the product by the respondent to the dealers constituted interstate commerce. The paint thus sold and transported is in a continuous process of interstate shipment from the time it leaves the respondent's factory until it reaches the several purchasers. An intervening sale would not terminate the interstate character of the transaction. *Greater N.Y. Live Poultry Chamber of Commerce v. United States*, 47 F. (2d) 156 (CCA 2); *Binderup v. Pathe Exchange*, 263 U.S. 291, 309. Nor did a temporary stoppage in the New York corporation's [554] place of business, and the subsequent transfer to other trucks for transportation, change the character of that interstate commerce. *Hughes Bros. Timber Co. v. Minn.*, 272 U.S. 469; *Wagner v. Covington*, 251 U.S. 95, 104.

Moreover, a device created for the purpose of changing transportation from interstate to intrastate commerce, between the factory of the respondent and the place of business of its several purchasers in an effort to evade the terms of the decree of this court, is legally ineffectual for that purpose. *Baltimore & O. S. W. Ry. v. Settle*, 260 U.S. 166.

The disobedience of the decree of this court thus entered constitutes a contempt with the inherent power of the court to administer punishment. The decree of this court bound the respondent perpetually in relation to the prohibited conduct not only within this circuit, but throughout the United States. *Leman Adm'r v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 451. It is guilty of contempt by its willful conduct. A fine of five hundred dollars (\$500) is accordingly imposed.

Motion granted.

FEDERAL TRADE COMMISSION *v.* ALGOMA LUMBER
CO. ET AL.¹

No. 240

(Argued December 14, 15, 1933. Decided January 8, 1934)

FEDERAL TRADE COMMISSION ACT, SECTION 5—FACT FINDINGS OF COMMISSION—
REVIEW—COURT LIMITATIONS.

Federal Trade Commission's fact findings, supported by testimony, being conclusive, reviewing court cannot appraise testimony and choose among uncertain and conflicting inferences therefrom (Federal Trade Commission Act, Sec. 5; 15 USCA Sec. 45).

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
YELLOW PINE PRODUCTS AS CALIFORNIA WHITE PINE—BUREAU OF STANDARDS—
“SIMPLIFIED PRACTICE RECOMMENDATIONS”—EFFECT.

“Simplified practice recommendations” of Bureau of Standards are wholly advisory and at most evidence, to be weighed with other evidence by Federal Trade Commission, in determining whether use of words “California white pine” to describe yellow pine products constitutes unfair competition.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
YELLOW PINE PRODUCTS AS CALIFORNIA WHITE PINE—RELATIVE QUALITY OF
TWO WOODS.

Sales of yellow pine products under name “California white pine” held unfair competition, even if latter would be substantially as good as genuine white pine.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
YELLOW PINE PRODUCTS AS CALIFORNIA WHITE PINE—RELATIVE QUALITY OF
TWO WOODS—FINDING OF WHITE PINE SUPERIORITY.

Evidence held to support Federal Trade Commission's findings that white pine is superior to *pinus ponderosa*, products of which were sold by certain manufacturers as “California white pine.”

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
YELLOW PINE PRODUCTS AS CALIFORNIA WHITE PINE—FINDING OF
CONFUSION.

Evidence held to support Federal Trade Commission's finding that retailers and consumers were confused as to character of yellow pine lumber, supplied under name of “California white pine”, with resulting prejudice to them.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
CONSUMER ORDERS—FILLING WITH THINGS OTHER THAN REQUESTED—
PRICE SAVING—CONSUMER PREJUDICE.

Consumer supplied with something else than thing he ordered is prejudiced within act prohibiting unfair competition, notwithstanding saving by lower price.

¹ Reported in 291 U.S. 67, 54 Sup. Ct. Rep. 315.

The group of cases involved, before the Commission, are reported in 15 F.T.C. 139, 166-168.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—USE AGAINST COMPETITORS—COMPETITORS' KNOWLEDGE OF—EFFECT.

Inherently unfair method of competition does not cease to be so because those competed against have become aware thereof.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—USE INITIATED PRECEDING COMMISSION ORGANIZATION—ABSENCE OF COMPLAINTS—PUBLIC ESTOPPEL.

Absence of complaints of unfair competitive practice even after organization of Federal Trade Commission will not estop community at large to prevent continuation thereof, whatever its effect on individuals.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—LAPSE OF TIME PRECEDING COMMISSION ACTION.

Lapse of time does not bar proceeding in public interest by Federal Trade Commission to set in order industry guilty of unfair competition by removing occasion for deception or mistake, unless submission thereto has gone so far that occasion for misunderstanding, or any so widespread as to be worthy of correction, has ended.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—USE PRECEDING COMMISSION ORGANIZATION AND/OR ACTION—LOCAL EMPLOYMENT OF PRACTICE, ABSENT FRAUDULENT INTENT, OR MUCH OPPORTUNITY FOR CONFUSION—ENLARGEMENT OF BUSINESS AREA—CONFLICT WITH GENUINE PRODUCT.

Manufacturers, selling yellow pine lumber in local markets under name "California white pine" for many years, without fraudulent design or much opportunity for confusion, could not enlarge area of their business without adjusting methods to new conditions arising from competition with dealers in genuine white pine lumber, with resulting confusion and deception, and thereby became guilty of unfair competition.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—FRAUD—AS NECESSARY ELEMENT OF.

Competition may be unfair within Federal Trade Commission Act, though not amounting to legal fraud.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—BENEFIT OF INNOCENT MISREPRESENTATION.

There is a kind of fraud in clinging to benefit resulting from misrepresentation, however innocently made.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—YELLOW PINE PRODUCTS AS "CALIFORNIA WHITE PINE"—PUBLIC INTEREST IN SANCTIONING—PRESERVATION OF WHITE PINE FORESTS.

Federal Trade Commission's orders, restraining unfair competition by sales of yellow pine lumber under name of "California white pine", held proper as against contention that public interest would be promoted by increasing demand for such lumber, thus abating destruction of white pine forests.

FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—YELLOW PINE PRODUCTS AS "CALIFORNIA WHITE PINE"—EXCISION OF WORD "WHITE" TO REMEDY.

Federal Trade Commission, finding from sufficient testimony that sales of yellow pine lumber under name "California white pine" constituted unfair competition, did not abuse discretion in concluding that no change of name short of excision of word "white" would adequately protect public.

(The syllabus, with substituted captions, is taken from 54 Sup. Ct. Rep. 315)

Proceeding by the Commission against the Algoma Lumber Co. and others. Orders of Commission, restraining unfair competition in interstate commerce, were annulled by Circuit Court of Appeals for the Ninth Circuit. (*Algoma Lumber Co. v. Federal Trade Commission*, 64 F. (2d) 618), and Commission brings certiorari. Judgment reversed. See, also (CCA) 56 F. (2d) 774.

Assistant Attorney General Stephens, with whom *Solicitor General Biggs* and *Messrs. Robert E. Healy, Martin A. Morrison, and Eugene W. Burr* were on the brief, for petitioner.

[69] *Mr. Allan P. Matthew*, with whom *Messrs. Warren Olney, Jr., and Carl I. Wheat* were on the brief for respondents.

By leave of Court, *Mr. Edward S. Rogers* filed a brief as *amicus curiae*.

Mr. Justice CARDOZO delivered the opinion of the Court:

In May, 1929, the Federal Trade Commission filed and served complaints against a group of fifty manufacturers on the Pacific coast charging "unfair competition in interstate commerce" in violation of section 5 of the Federal Trade Commission Act (38 Stat. 717, 719, c. 311, sec. 5; 15 U.S.C.A. sec. 45).

After the service of answers the proceedings were consolidated and many witnesses examined. The outcome was a series of reports sustaining the complaints as to thirty-nine manufacturers, with orders to "cease and desist" from the practice challenged as unfair. Twelve companies thus enjoined petitioned the Circuit Court of Appeals for the Ninth Circuit to review the orders of the Commission. Such review being had, the orders were annulled (64 F. (2d) 618). A writ of certiorari brings the case here.

The practice complained of as unfair and enjoined by the Commission is the use by the respondents of the words "California white pine" to describe lumber, logs, or other forest products made from the pine species known as *pinus ponderosa*. The findings as to this use and its effect upon the public are full and circumstantial. They are too long to be paraphrased conveniently within the limits of an opinion. We must be content with an imperfect summary.

The respondents are engaged in the manufacture and sale of lumber and timber products which they ship from [70] California and Oregon to customers in other States and foreign lands. Much of what they sell comes from the species of tree that is known among botanists as *pinus ponderosa*. The respondents sell it under the name of "California white pine", and under that name, or at times "white pine" simply, it goes to the consumer. In truth it is not a white

pine, whether the tests to be applied are those of botanical science or of commercial practice and understanding.

Pine trees, the genus "pinus", have for a long time been divided by botanists, foresters, and the public generally into two groups—the white pine and the yellow. The white pine group includes by common consent, the northern white pine (*pinus strobus*), the sugar pine and the Idaho white pine. It is much sought after by reason of its durability under exposure to weather and moisture, the proportion of its heartwood as contrasted with its sapwood content as well as other qualities. For these reasons it commands a high price as compared with pines of other species. The yellow pine group is less durable, harder, heavier, more subject to shrinkage and warping, darker in color, more resinous, and more difficult to work. It includes the long leaf yellow pine (*pinus palustris*), grown in the Southern States, and the *pinus ponderosa*, a far softer wood, which is grown in the Pacific Coast States, and in Arizona and New Mexico as well as in the "inland empire" (eastern Washington, Oregon, Idaho, and western Montana).

Of the varieties of white pine, the northern or *pinus strobus* has been known better and longer than the others. It is described sometimes as northern white pine, sometimes as white pine simply, sometimes with the addition of its local origin, as Maine white pine, Michigan, Wisconsin, Minnesota, Canadian, New Brunswick. It is native to the Northeastern States and to the Great Lakes region, as far west as Minnesota. It is found also in Canada and [71] along the Appalachian highlands. It was almost the only building material for the settlers of New England, and so great is its durability that many ancient buildings made from it in the seventeenth and eighteenth centuries survive in good condition. The sugar pine is native to the upland regions of California, southern Oregon, and parts of Nevada. The Idaho white pine grows in the mountainous sections of Idaho, Washington, and Oregon and in parts of British Columbia. The white pine species "still holds an exalted reputation among the consuming public" and "in general esteem is the highest type of lumber as respects the excellences desired in soft wood material." "It is coming more and more to be a specialty wood, largely devoted to special purposes, as it becomes scarcer and higher in price. It is in great demand."

About 1880 the *pinus ponderosa*, though botanically a yellow pine, began to be described as a white pine when sold in the local markets of California, New Mexico, and Arizona, the description being generally accompanied by a reference to the State of origin, as "California white pine", etc. By 1886, sales under this description had spread to Nevada and Utah with occasional shipments farther east. About 1900, they entered the Middle Western

States, and about 1915 had made their way into New England, though only to a small extent. The pines from the "inland empire" traveled east more slowly, and when they did were described as western white pine, a term now generally abandoned. The progress of the newcomers both from the coast and from the "inland empire" was not wholly a march of triumph. In their movement to the central and eastern markets they came into competition more and more with the genuine white pine with which those markets had been long familiar. Mutterings of discontent were heard. In 1924, partly as a result of complaints and official investigations, many of the producers, notably those of the "inland empire", as well as [72] some producers in California and Arizona, voluntarily gave up the use of the adjective "white" in connection with their product, and adopted the description "pondosa pines", pondosa being a corruption or abbreviation of the ponderosa of the botanists. "Pondosa pine is the term employed for ponderosa by the representatives of producers of slightly more than half of the ponderosa marketed." The respondents and others, however, declined to make a change. During the next five years California white pine and its equivalents became an even more important factor in the lumber markets of the country. Accumulating complaints led to an inquiry by the Commission, which had its fruit in this proceeding.

The confusion and abuses growing out of these interlocking names have been developed in the findings. Many retail dealers receiving orders for white pine deliver California white pine, not knowing that it differs from the lumber ordered. Many knowing the difference deliver the inferior product because they can buy it cheaper. Still others, well informed and honest, deliver the genuine article, thus placing themselves at a disadvantage in the race of competition with the unscrupulous and the ignorant. Trade has thus been diverted from dealers in white pine to dealers in *pinus ponderosa* masquerading as white pine. Trade has also been diverted from dealers in *pinus ponderosa* under the name *pinus pondosa* to dealers in *pinus ponderosa* under the more attractive label. The diversion of trade from dealers of one class to dealers of another is not the only mischief. Consumers, architects, and retailers have also been misled. They have given orders for the respondents' product, supposing it to be white pine and to have the qualities associated with lumber of that species. They have accepted deliveries under the empire of that belief. True indeed it is that the woods sold by the respondents, though not a genuine [73] white pine, are nearer to that species in mechanical properties than they are to the kinds of yellow pine indigenous to the south. The fact that for many purposes they are half way between the white species and the yellow makes the practice of substitution easier than it would be if the difference were

plain. Misrepresentation and confusion flourish in such a soil. From these findings and others the Commission was brought to the conclusion that the respondents compete unfairly in transacting business as they do, and that in the interest of the public their methods should be changed.

"The findings of the Commission as to facts, if supported by testimony, shall be conclusive" (15 U.S.C.A. sec. 45). The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U.S. 52, 61, 63) forbid that exercise of power.

First. The argument is made that unfair competition is disproved by the "simplified practice recommendations" of the Bureau of Standards when read in conjunction with the testimony as to the comparative utility of the genuine white pine and *pinus ponderosa*.

The Court of Appeals concedes that the recommendations of the Bureau will not avail without more to control the action of the Commission. Cf. *Brougham v. Blanton Mfg. Co.*, 249 U.S. 495, 499; *Piedmont & Northern Ry. Co. v. Interstate Commerce Commission*, 286 U.S. 299, 312. The view was expressed, however, that alone they are in a high degree persuasive, and that in conjunction with other evidence they are even controlling. In [74] particular that result was thought to follow in this case because the substituted wood, in the judgment of the court, is so nearly equal in utility that buyers are not injured, even though misled.²

Such a holding misconceives the significance of the Government's endeavor to simplify commercial practice. It misconceives even more essentially the significance of the substitution of one article for another without notice to the buyer.

(a) The Bureau of Standards is a branch of the Department of Commerce. At its instance representatives of manufacturers, sellers, and users of lumber, as well as architects, engineers, and others, met in conference at various times between 1922 and 1928 in an endeavor to simplify methods of business in the lumber industry. Following these conferences the Bureau in 1929 issued a report entitled "Lum-

² "It would not necessarily follow * * * 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" (64 F. (2d) 618 at p. 620).

ber, Simplified Practice Recommendations." Many subjects that were considered are without relation to this case. The report dealt with standards of size, of inspection, of structural material, and other cognate themes. One of its subdivisions, however, enumerates the standard commercial names for lumber of many types. Sixteen names of pines are stated in the list, and among them is the name "California white pine" with its botanical equivalent, *pinus ponderosa*.

The recommendations of the Bureau of Standards for the simplification of commercial practice are wholly [75] advisory. Dealers may conform or diverge as they prefer. The Bureau has defined its own function in one of its reports. The Purpose and Application of Simplified Practice, National Bureau of Standards, Department of Commerce, July 1, 1931, pages 2, 7, 10, 17. "Simplified practice is a method of eliminating superfluous variety through the voluntary action of industrial groups." "The Department of Commerce has no regulatory powers" with reference to the subject, and hence "it is highly desirable that this recommendation be kept distinct from any plan or method of governmental regulation or control." There is nothing to show that in making up the list of names the Bureau made any investigation of the relation between *pinus ponderosa* and the white pines of the east. Certainly it had no such wealth of information on the subject as was gathered by the Commission in the course of this elaborate inquiry. There is nothing to show to what extent its advice has been accepted by the industry. The record does show that the recommendation does not accord with the practice of other governmental agencies. For example, the United States Forest Service in its publications and forest signs describes the ponderosa species as western yellow pine. In such circumstances the action of the Bureau was at most a bit of evidence to be weighed by the Commission along with much besides. It had no such significance as to discredit in any appreciable degree a conclusion founded upon evidence otherwise sufficient. The powers and function of the two agencies of government are essentially diverse. The aim of the one is to simplify business by substituting uniformity of methods for wasteful diversity, and in the achievement of these ends to rely upon cooperative action. The aim of the other is to make the process of competition fair. There are times when a description is deceptive from the very fact of its simplicity.

[76] (b) The wood dealt in by the respondents is not substantially as good as the genuine white pine, nor would sales under the wrong name be fitting if it were.

The ruling of the court below as to this is infected by a twofold error. The first is one of fact. The supposed equivalence is unreal.

The second is one of law. If the equivalence existed, the practice would still be wrong.

The Commission found as a fact that the genuine white pine is superior for many reasons to *pinus ponderosa*, and notably because of its greater durability. The court held the view that the difference in durability had not been proved so clearly as to lay a basis for the orders, and this, it seems, upon the ground that though the superiority exists, the evidence fails to disclose its precise degree. "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" (64 F. (2d) 618 at p. 622).

Court and counsel for the respondents lean heavily at this point upon the testimony of the director of the United States Forest Products Laboratory at Madison, Wis., and his assistant, Mr. Hunt. The director testified that he did not know the comparative durability of the pines, and would refer any inquirer to specialists, of whom Mr. Hunt was one. The testimony of Mr. Hunt is that there have been no tests in a strict sense, but that the comparison between the white pines and *pinus ponderosa* has been based upon observation and opinion. He continues: "The general experience with the use of the white pines, during the two hundred years since they began to be used, indicated that those 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." Inquirers at the laboratory were accordingly advised that "the [77] heartwood of the white pine has more decay resistance, will give longer service under conditions favoring decay than the heartwood of *pinus ponderosa*", and "the mill run of the white pine probably would average higher in durability under decay-producing conditions."

This testimony, even if it stood alone, would tend to sustain rather than to discredit the findings by the Commission that the genuine white pines are materially superior to the woods that the respondents are selling as a substitute. It is fortified, however, by evidence from many other sources. To be sure there is contradiction which we have no thought to disparage. For present purposes we assume the credibility of those who spoke for the complainants. Wholesalers, retailers, manufacturers, lumber graders, laboratory experts, and others bore witness to the comparative merits of the woods, stating their own experience as well as common opinion among their fellows in the industry. If all this may be ignored in the face of the findings

of the Commission, it can only be by turning the court into an administrative body which is to try the case anew.

What has been written has been aimed at the position that *pinus ponderosa* is a good or almost as good as the white pines of the east. We have yet to make it plain that the substitution would be unfair though equivalence were shown. This can best be done in considering another argument which challenges the finding of the Commission that there has been misunderstanding on the part of buyers. To this we now turn.

Second. The argument is made that retailers and consumers are not shown to have been confused as to the character of the lumber supplied by the respondents, and that even if there was confusion there is no evidence of prejudice.

Both as to the fact of confusion and its consequences the evidence is ample. Retailers order "white pine" from [78] manufacturers and take what is sent to them, passing it on to their customers. At times they do this knowing or suspecting that they are supplying California white pine instead of the genuine article, and supplying a wood that is inferior, at least for the outer parts of buildings. Its comparative cheapness creates the motive for the preference. At times they act in good faith without knowledge of the difference between the California pines and others. Architects are thus misled, and so are builders and consumers. There is a suggestion by the court that for all that appears the retailers, buying the wood cheaper, may have lowered their own price, and thus passed on to the consumer the benefit of the saving. The inference is a fair one that this is not always done, and perhaps not even generally. If they lower the price at all, there is no reason to believe that they do so to an amount equivalent to the saving to themselves.

But saving to the consumer, though it be made out, does not obliterate the prejudice. Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 216; *City of Carlsbad v. W. T. Thackeray & Co.*, 57 Fed. 18. In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance. Nor is the prejudice only to the consumer. Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber had been rightly named, are diverted to others whose methods are less scrupulous. "A method inherently unfair does not cease to be so because those competed against have become

aware of the wrongful practice." *Federal Trade Commission v. Winsted* [79] *Hosiery Co.*, 258 U.S. 483, 494.³ The careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down.

Third. The argument is made that the name for the respondents' lumber was adopted more than thirty years ago without fraudulent design, and that a continuation of the use is not unfair competition, though confusion may have developed when the business, spreading eastward, attained national dimensions.

The Commission made no finding as to the motives animating the respondents in the choice of the contested name. The respondents say it was chosen to distinguish their variety of yellow pine from the harder yellow pines native to the Southern States. We may assume that this is so. The fact remains, however, that the pines were not white either botanically or commercially, though the opportunity for confusion may have been comparatively slight when the sales were restricted to customers in local markets, buying for home consumption. Complaints, if there were any, must have been few and inarticulate at a time when there was no supervisory body to hold business to its duty. According to the law as then adjudged, many competitive practices that today may be suppressed (*Federal Trade Commission v. Winsted Hosiery Co.*, *supra*), were not actionable wrongs, the damage to the complainants being classified often as collateral and remote. *American Washboard Co. v. Saginaw Mfg. Co.*, 103 Fed. 281, 286.⁴ The Federal Trade Commission was not organized till 1914, its jurisdiction then as now confined to interstate and foreign commerce. Silence up to that time is [80] not even a faint token that the misapplied name had the approval of the industry. It may well have meant no more than this, that the evil was not great, or that there was no champion at hand to put an end to the abuse. Even silence thereafter will not operate as an estoppel against the community at large, whatever its effect upon individuals asserting the infringement of proprietary interests. *French Republic v. Saratoga Vichy Co.*, 191 U.S. 427. There is no bar through lapse of time to a proceeding in the public interest to set an industry in order by removing the occasion for deception or mistake, unless submission has gone so far that the occasion for misunderstanding, or for any so widespread as to be worthy of correction, is already at an end. Competition may then be fair irrespective of its origin.

³ The many cases in which the Federal Trade Commission has acted to prevent misbranding or like misrepresentation will be found collected in Henderson, *The Federal Trade Commission*, p. 182, et seq.

⁴ The cases are reviewed by Henderson, *The Federal Trade Commission*, p. 179, et seq.

This will happen, for illustration, when by common acceptance the description, once misused, has acquired a secondary meaning as firmly anchored as the first one. Till then, with every new transaction, there is a repetition of the wrong.

The evidence here falls short of establishing two meanings with equal titles to legitimacy by force of common acceptance. On the contrary, revolt against the pretender, far from diminishing, has become increasingly acute. With the spread of business eastward, the lumber dealers who sold pines from the States of the Pacific coast were involved in keen competition with dealers in lumber from the pines of the East and Middle West. In the wake of competition came confusion and deception, the volume mounting to its peak in the four or five years before the Commission resolved to act. Then, if not before, misbranding of the pines was something more than a venial wrong. The respondents, though at fault from the beginning, had been allowed to go their way without obstruction while the mischief was not a crying one. They were not at liberty to enlarge the area of their business without adjusting their methods to the needs of new con[81]ditions. An analogy may be found in the decisions on the law of trade marks where the principle is applied that a name legitimate in one territory may generate confusion when carried into another, and must then be given up. *Hanover Milling Co. v. Metcalf*, 240 U.S. 403, 416; *United Drug Co. v. Rectanus Co.*, 248 U.S. 90, 100. More than half the members of the industry have disowned the misleading name by voluntary action and are trading under a new one. The respondents who hold out are not relieved by innocence of motive from a duty to conform. Competition may be unfair within the meaning of this statute and within the scope of the discretionary powers conferred on the Commission, though the practice condemned does not amount to fraud as understood in courts of law. Indeed there is a kind of fraud, as courts of equity have long perceived, in clinging to a benefit which is the product of misrepresentation, however innocently made. *Redgrave v. Hurd*, L.R. 20 Ch.D. 1, 12, 13; *Rawlins v. Wickham*, 3 De G. & J. 304, 317; *Hammond v. Pennock*, 61 N.Y. 145, 152. That is the respondents' plight today, no matter what their motives may have been when they began. They must extricate themselves from it by purging their business methods of a capacity to deceive.

Fourth. Finally, the argument is made that the restraining orders are not necessary to protect the public interest (see *Federal Trade Commission v. Royal Milling Co.*, *supra*), but to the contrary that the public interest will be promoted by increasing the demand for *pinus ponderosa*, though it be sold with a misleading label, and thus abating the destruction of the pine forests of the east.

The conservation of our forests is a good of large importance, but the end will have to be attained by methods other than a license to do business unfairly.

The finding of unfair competition being supported by the testimony, the Commission did not abuse its discretion in reaching the conclusion that no change of the [82] name short of the excision of the word "white" would give adequate protection.

The judgment is reversed.

FEDERAL TRADE COMMISSION v. ARTLOOM CORPORATION¹

No. 5072

(Circuit Court of Appeals, Third Circuit, January 30, 1934)

FEDERAL TRADE COMMISSION ACT, SECTION 5—CEASE AND DESIST ORDERS—ENFORCEMENT—COURT LIMITATIONS.

On application to enforce Federal Trade Commission cease and desist order, court is limited to determination of questions whether Commission's findings are supported by any evidence and justify its conclusion (15 USCA sec. 45).

FEDERAL TRADE COMMISSION ACT, SECTION 5—CEASE AND DESIST ORDERS—ENFORCEMENT—SALE OF RUGS AS AND FOR WILTONS.

Evidence *held* to support Federal Trade Commission's finding that rugs sold by certain manufacturer as Wilton rugs were not genuine Wilton rugs.

FEDERAL TRADE COMMISSION ACT, SECTION 5—CEASE AND DESIST ORDERS—ENFORCEMENT—FINDINGS OF COMMISSION—IN GENERAL.

Federal Trade Commission's fact findings are not merely persuasive, but conclusive, if supported by testimony, though court might have reached different conclusions.

FEDERAL TRADE COMMISSION ACT, SECTION 5—CEASE AND DESIST ORDERS—ENFORCEMENT—SALE OF RUGS MISBRANDED AS WILTONS—AS UNFAIR METHOD OF COMPETITION.

Sale of rugs, misbranded as Wiltons, harmed competitors, selling genuine Wiltons and deluded ultimate consumers, so as to justify Federal Trade Commission's cease and desist order.

(The syllabus with substituted captions is taken from 69 F. (2d) 36)

Application by Commission for enforcement of order that Artloom Corporation, trading as Artloom Rug Mills, cease and desist from misbranding rugs manufactured and sold by it. Order affirmed, and enforcement order granted.

¹ Rehearing denied Mar. 5, 1934. The case is reported in 69 F. (2d) 36. For case before Commission, see 14 F.T.C. 383.

PGad B. Morehouse, Robert E. Healy, chief counsel, Federal Trade Commission, and *Martin A. Morrison*, assistant chief counsel, all of Washington, D.C., for petitioner.

Frank B. Fox, Fraley & Paul, and Henry N. Paul, all of Philadelphia, Pa., for respondent.

Before WOOLLEY, DAVIS, and THOMPSON, *Circuit Judges*.

[37] THOMPSON, *Circuit Judge*:

This case comes before us upon an application for the enforcement of an order of the Federal Trade Commission. The Commission filed a complaint in which it charged that the respondent, the Artloom Corporation, manufactured and sold in interstate commerce certain rugs, and misbranded them as Wilton rugs under the trade name "Bagdad Seamless Jacquard Wilton". The Commission found that the respondent had been selling its Bagdad rugs as and for genuine Wiltons; that the term "Wilton rug", as applied to a rug fabric on the surface of which is displayed a design of two or more colors, implied a fabric having a weave construction in which the warp pile yarns, when not required upon the surface for the design or pattern, are continued in the subsurface structure of the fabric; that the respondent's Bagdad rugs were made under a process essentially unlike that used in making Wilton rugs; that, when made, the Bagdad rugs consist of a weave construction differing materially from that of Wilton rugs; that the sale of the respondent's Bagdad rugs, as and for genuine Wiltons, constituted an unfair method of competition in commerce, having a capacity and tendency to deceive the public into the belief that, in purchasing the respondent's Bagdad rugs, they were purchasing genuine Wilton rugs; and that trade was thereby diverted from competitors to the respondent. The application for the enforcement order set forth that the Commission had made a cease and desist order which the respondent failed and neglected to obey. This order reads:

It is now ordered, That the respondent Artloom Corporation, a corporation doing business under the name and style of Artloom Rug Mills, its agents, representatives, servants, and employees, in connection with the sale and distribution in interstate commerce of rug and carpet fabrics, do cease and desist from directly or indirectly,

1. Using the word "Wilton" in describing, designating, or labeling any rug fabric on the surface of which is displayed a design or pattern in two or more colors, which is of the same weave construction as the "Bagdad Seamless Jacquard Wilton" rug fabric now manufactured by respondent, or which is of a weave construction in which the warp pile yarns, when not required at the surface for the said design or pattern, are not continued in the subsurface structure of the fabric.

The statute, by virtue of which this application was made by the Commission reads as follows:

Unfair methods of competition in commerce are declared unlawful.

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. * * *

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 facts, if supported by testimony, shall be conclusive (15 USCA sec. 45).

As the statute directly provides that the fact findings of the Commission, if supported by testimony, shall be conclusive, this court is limited to the determination of two questions—first, whether such findings are supported by any evidence and, second, if they are so supported, whether these facts, as found, justify the conclusion that the sale of the respondent's Bagdad rugs as Wilton rugs constituted unfair competition in commerce. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U.S. 568. *James S. Kirk & Co. v. Federal Trade Commission*, 59 F. (2d) 179, certiorari denied 287 U.S. 663.

No rug manufacturer today makes and sells Wilton rugs which are similar in all respects to those originally named Wiltons more than one hundred years ago. The definition of a genuine Wilton rug approved by the Commission was formulated in 1925 by a voluntary association of rug manufacturers and dealers. Had the Commission relied solely on this definition, we could not but acknowledge the justice of the contention that the respondent is not bound thereby. The Commission, however, did not rely solely on the definition so formulated, but heard considerable testimony on the question as to what characteristics were essential to a genuine Wilton rug. The voluminous record contains testimony of many witnesses called on behalf of the Commission, corroborated by technical works on the art of rug weaving, to the effect that no rug is a genuine Wilton which fails to have the dyed warp yarn, when not used in the actual making of the pattern, dormant in the body of the rug. While, on the other hand, there was testimony defining and describing the method of manufacture and the characteristics of a genuine Wilton rug

which would have justified the labeling of the respondent's Bagdad rugs as Wilton rugs if the Commission had based its findings upon the testimony of the respondent's witnesses, nevertheless the Commission had before it ample evidence upon which to find that the respondent's Bagdad rugs did not contain the essentials of genuine Wilton rugs.

Under the ruling of the Supreme Court in *Federal Trade Commission v. Algoma Lumber Co.*, opinion filed January 8, 1934, 291 U.S. 67, the fact findings of the Commission are not to be regarded as merely persuasive. Justice Cardozo there said (p. 73):

The findings of the Commission as to facts, if supported by testimony, shall be conclusive (15 USCA sec. 45). The court of appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U.S. 52, 61, 63) forbid that exercise of power.

Since the statute and decisions expressly confer upon the Commission and not upon the court the duty of determining the facts, it is of no consequence that, if the Congress had conferred fact finding power upon the court, it might have reached a conclusion other than that of the Commission.

The premise of misbranding being supported by the Commission's findings, the conclusion follows that, when the respondent sold its misbranded rugs in commerce, it thereby harmed its competitors and deluded the ultimate consumers. *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212.

The order of the Federal Trade Commission is affirmed. An enforcement order may be entered in accordance with the prayer of the petition.

**FEDERAL TRADE COMMISSION *v.* R. F. KEPPEL
& BRO., INC.¹**

No. 194

(Argued January 11, 1934. Decided February 5, 1934)

**FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
MERCHANTISING LOTTERY SCHEMES—WHERE PRACTICE OF FAR-REACHING EX-
TENT AND IMPLICATIONS—PUBLIC INTEREST.**

Distribution of candy by lot or chance by 40 or more manufacturers necessarily affecting not only competing manufacturers but retailers and consumers [including young school children], *held* of public concern, so as to justify Federal Trade Commission's order prohibiting practice, if otherwise within statute (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

**FEDERAL TRADE COMMISSION ACT, SECTION 5—UNFAIR METHODS OF COMPETITION—
PRACTICES MORALLY REPREHENSIBLE—AVAILABILITY TO COMPETITORS.**

Method of competition which casts on one's competitors burden of loss of business unless they will descend to practice which they are under powerful moral compulsion not to adopt, though it is not criminal, involves "unfair method of competition" which Federal Trade Commission may prohibit.

**FEDERAL TRADE COMMISSION ACT, SECTION 5.—COMMISSION POWERS—BUSINESS
MORALS AND TROUBLESOME COMPETITION.**

Federal Trade Commission is not authorized to make regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring morals of business men.

**[424] FEDERAL TRADE COMMISSION ACT, SECTION 5.—UNFAIR METHODS OF COM-
PETITION—DETERMINATION OF, BY COMMISSION—WEIGHT.**

While it is for court to determine what practices or methods of competition are unfair, in passing on that question, determination of Federal Trade Commission is of weight.

**FEDERAL TRADE COMMISSION ACT, SECTION 5.—UNFAIR METHODS OF COMPETI-
TION—MERCHANTISING LOTTERY SCHEMES—WHERE PRIZES AND PRICES
CONTINGENT UPON CHANCE SELECTION**

Manufacturer's distribution of candy under sales plan whereby prizes were given with some of pieces, and whereby prizes to be paid for some pieces were named on tickets enclosed in wrapper, *held* "unfair method of competition" which Federal Trade Commission could prohibit.

**FEDERAL TRADE COMMISSION ACT, SECTION 5.—UNFAIR METHODS OF COMPETI-
TION—SCOPE OR EXTENT OF PHRASE—AS LIMITED TO FIXED AND UNYIELDING
CATEGORIES**

Neither the language nor the history of the act suggests that Congress intended to confine the prohibited methods to fixed and unyielding categories, and while the act undoubtedly was aimed at all the familiar methods

¹ The case is reported in 291 U. S. 304. The case before the Commission is reported in 15 F. T. C. 276.

of law violation which prosecutions under the Sherman Act disclosed, it also had a broader purpose, since Congress, in defining the Commission's powers, advisedly adopted the phrase in question, which does not "admit of precise definition, but the meaning and application of which must be arrived at" by the "gradual process of judicial inclusion and exclusion."

(The syllabus, with the exception of the captions, and the last paragraph, supplied by the editor and compiler, is taken from 54 Sup. Ct. Rep. 423.)

Petition to review order of Commission forbidding certain practices of petitioner as an unfair method of competition. On certiorari to review decree of Court of Appeals (63 F. (2d) 81), setting aside Commission's order. Judgment of Court of Appeals reversed.

The *Attorney General* and *Mr. Harold M. Stephens*, Assistant Attorney General, for petitioner.

Mr. George E. Elliott, of Washington, D.C., for respondents.

Mr. Justice STONE delivered the opinion of the Court:

This case comes here on certiorari (290 U.S. 613), to review a decree of the Court of Appeals for the Third Circuit, which set aside an order of the Federal Trade Commission forbidding certain trade practices of respondent as an unfair method of competition. (63 F. (2d) 81; sec. 5, Federal Trade Commission Act, 38 Stat. 717, 719; 15 USCA, sec. 45.)

The Commission found that respondent, one of numerous candy manufacturers similarly engaged, manufactures, sells, and distributes, in interstate commerce, package assortments of candies known to the trade as "break and take" packages, in competition with manufacturers of assortments known as "straight goods" packages. Both types are assortments of candies in packages in convenient arrangement for sale by the piece at a small price in retail stores in what is known as the penny candy trade. The break and take assortments are so arranged and offered for sale to consumers as to avail of the element of chance as an inducement to the retail purchasers. One assortment, consisting of 120 pieces retailing at 1 cent each, includes 4 pieces, each having concealed within its wrapper a single cent, so that the purchasers of those particular pieces of candy receive back the amount of the purchase price and thus obtain the candy without cost. Another contains 60 pieces of candy, each having its retail price marked on a slip of paper concealed within its wrapper; 10 pieces retail at 1 cent each, 10 at 2 cents, and 40 at 3 cents. The price paid for each piece is that named on the price ticket, ascertained only after the purchaser has selected the candy and the wrapper has been removed. A third assortment consists of 200

pieces of candy, a few of which have concealed centers of different colors, the remainder having white centers. The purchasers of the candy found to have colored centers are given prizes packed with the candy consisting of other pieces of candy or a package containing lead pencils, penholder, and ruler. Each assortment is accompanied by a display card, attractive to children, prepared by respondent for exhibition and use by the dealer in selling the candy, explaining the plan by which either the price or the amount of candy or other merchandise which the purchaser receives is affected by chance. The pieces of candy in the break and take packages are either smaller than those of the competing straight goods packages, which are sold at a comparable price without the aid of any chance feature, or they are of inferior quality. Much of the candy assembled in the break and take packages is sold by retailers, located in the vicinity of schools, to school children.

The Commission found that the use of the break and take package in the retail trade involves the sale or distribution of the candy by lot or chance; that it is a lottery or gambling device which encourages gambling among children; that children, enticed by the element of chance, purchase candy so sold in preference to straight goods candy; and that the competition between the two types of package results in a substantial diversion of trade from the manufacturers of the straight goods package to those distributing the break and take type. It found further that in some States lotteries and gaming devices are penal offenses; that the sale or distribution of candy by lot or chance is against public policy; that many manufacturers of competing candies refuse to engage in the distribution of the break and take type of package because they regard it as a reprehensible encouragement of gambling among children; and that such manufacturers are placed at a disadvantage in competition. The evidence shows that others have reluctantly yielded to the practice in order to avoid loss of trade to their competitors.

The court below held, as the respondent argues here, that respondent's practice does not hinder competition or injure its competitors, since they are free to resort to the same sales method; that the practice does not tend to create a monopoly or involve any deception to consumers or the public, and hence is not an unfair method of competition within the meaning of the statute.

Upon the record it is not open to question that the practice complained of is a method of competition in interstate commerce and that it is successful in diverting trade from competitors who do not employ it. If the practice is unfair within the meaning of the act, it is equally clear that the present proceeding, aimed at suppressing it,

is brought, as section 5 of the act requires, "in the interest of the public". The practice is carried on by forty or more manufacturers. The disposition of a large number of complaints pending before the Commission, similar to that in the present case, awaits the outcome of this suit. Sales of the break and take package by respondent aggregate about \$234,000 per year. The proceeding involves more than a mere private controversy. A practice so generally adopted by manufacturers necessarily affects not only competing manufacturers but the far greater number of retailers to whom they sell, and the consumers to whom the retailers sell. Thus the effects of the device are felt throughout the penny candy industry. A practice so wide-spread and so far-reaching in its consequences is of public concern if in other respects within the purview of the statute. *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 216. Compare *Federal Trade Commission v. Klesner*, 280 U.S. 19, 28. Hence we pass without further discussion to the decisive question whether the practice itself is one over which the Commission is given jurisdiction because it is unfair.

Although the method of competition adopted by respondent induces children, too young to be capable of exercising an intelligent judgment of the transaction, to purchase an article less desirable in point of quality or quantity than that offered at a comparable price in the straight goods package, we may take it that it does not involve any fraud or deception. It would seem also that competing manufacturers can adopt the break and take device at any time and thus maintain their competitive position. From these premises respondent argues that the practice is beyond the reach of the Commission because it does not fall within any of the classes which this Court has held subject to the Commission's prohibition. See *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427; *Federal Trade Commission v. Beechnut Packing Co.*, 257 U.S. 441, 453; *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 652; *Federal Trade Commission v. Royal Milling Co.*, supra, [288 U.S.] at 217. But we cannot say that the Commission's jurisdiction extends only to those types of practices which happen to have been litigated before this Court.

Neither the language nor the history of the act suggests that Congress intended to confine the forbidden methods to fixed and unyielding categories. The common law afforded a definition of unfair competition and, before the enactment of the Federal Trade Commission Act, the Sherman Antitrust Act (15 USCA, secs. 1-7, 15 note) had laid its inhibition upon combinations to restrain or monopolize interstate commerce which the courts had construed to

include restraints upon competition in interstate commerce. It would not have been a difficult feat of draftsmanship to have restricted the operation of the Trade Commission Act to those methods of competition in interstate commerce which are forbidden at common law or which are likely to grow into violations of the Sherman Act, if that had been the purpose of the legislation.

The act undoubtedly was aimed at all the familiar methods of law violation which prosecutions under the Sherman Act had disclosed. See *Federal Trade Commission v. Raladam*, supra, [283 U.S.] 649, 650. But as this Court has pointed out it also had a broader purpose, *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, 493; *Federal Trade Commission v. Raladam Co.*, supra, [283 U.S.] 648. As proposed by the Senate Committee on Interstate Commerce and as introduced in the Senate, the bill which ultimately became the Federal Trade Commission Act declared "unfair competition" to be unlawful.¹ But it [426] was because the meaning which the common law had given to those words was deemed too narrow that the broader and more flexible phrase "unfair methods of competition"

¹ The Senate Committee on Interstate Commerce, in recommending the bill in its original form, seems to have adopted the phrase "unfair competition" with the deliberate purpose of giving to the Commission some latitude for dealing with new and varied forms of unfair trade practices. The Committee said in its report of June 13, 1914, Senate Report No. 597, 63d Cong., second session, page 13:

"The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid their continuance or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine what practices were unfair. It concluded that the latter course would be the better, for the reason, as stated by one of the representatives of the Illinois Manufacturers' Association, that there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.

"It is believed that the term 'unfair competition' has a legal significance which can be enforced by the commission and the courts, and that it is no more difficult to determine what is unfair competition than it is to determine what is a reasonable rate or what is an unjust discrimination. The committee was of the opinion that it would be better to put in a general provision condemning unfair competition than to attempt to define the numerous unfair practices, such as local price cutting, interlocking directorates, and holding companies intended to restrain substantial competition."

Senator Newlands, in introducing the bill for the Committee, emphasized this feature. In answering the criticism that the phrase "unfair competition" lacked definition he said, 51 Cong. Record, 11084:

"Our answer to this is that it would be utterly impossible for Congress to define the numerous practices which constitute unfair competition and which are against good morals in trade, for we are beginning to realize that there is a standard of morals in trade or that there ought to be. Germany does not hesitate by law to condemn practices in business that are *contra bonos mores*. It leaves their tribunals to determine what practices are against good morals.

"It is the illusive character of the trade practice that makes it though condemned today appear in some other form tomorrow. If we should attempt to define all the trade practices that can be devised, that would create dishonest advantage in competition, we would undertake a hopeless task."

was substituted.² Congress, in defining the powers of the Commission, thus advisedly adopted a phrase which, as this Court has said, does not "admit of precise definition but the meaning and application of which must be arrived at by what this Court elsewhere has called 'the gradual process of judicial inclusion and exclusion'". *Federal Trade Commission v. Raladam Co.*, supra, 283 U.S. 648; compare *Davidson v. New Orleans*, 96 U.S. 97, 104.³

The argument that a method used by one competitor is not unfair if others may adopt it without any restriction of competition between them was rejected by this Court in *Federal Trade Commission v. Winsted Hosiery Co.*, supra; compare *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67. There it was specifically held that a trader may not, by pursuing a dishonest practice, force his competitors to choose between its adoption or the loss of their trade. A method of competition which casts upon one's competitors the burden of the loss of business unless they will descend to a practice which they are under a powerful moral compulsion not to adopt, even though it is not criminal, was thought to involve the kind of unfairness at which the statute was aimed.

The practice in this case presents the same dilemma to competitors, and we can perceive no reason for distinguishing between the element of chance as employed here and the element of deception involved in labelling cotton goods "Natural Wool", as in the *Winsted case*. It is true that the statute does not authorize regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring the morals of business men. But here the competitive method is shown to exploit consumers, children, who are unable to protect themselves. It employs a device whereby the amount of the return they receive from the expenditure of money is made to depend upon chance. Such devices have met with condemnation throughout the community. Without inquiring whether, as respondent contends, the criminal statutes imposing penalties on

² The phrase "unfair methods of competition" was substituted for "unfair competition" in the conference committee. This change seems first to have been suggested by Senator Hollis in debate on the floor of the Senate in response to the suggestion that the words "unfair competition" might be construed as restricted to those forms of unfair competition condemned by the common law. 51 Cong. Record, 12145. The House managers of the conference committee, in reporting this change said, House Report No. 1142, 63d Congress, 2d sess., September 4, 1914, at page 19:

"It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would undertake an endless task. It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of this country. Whether competition is unfair or not generally depends upon the surrounding circumstances of the particular case. What is harmful under certain circumstances may be beneficial under different circumstances."

³ References showing the details of the legislative history of the act may be found in Handler, *The Jurisdiction of the Federal Trade Commission over False Advertising*, 31 *Columbia Law Review* 527; Montague, "Unfair Methods of Competition", 25 *Yale Law Journal* 20; Henderson, *The Federal Trade Commission*, c. I.

gambling, lotteries and the like, fail to reach this particular practice in most or any of the States, it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to [427] public policy. For these reasons a large share of the industry holds out against the device, despite ensuing loss in trade, or bows reluctantly to what it brands unscrupulous. It would seem a gross perversion of the normal meaning of the word, which is the first criterion of statutory construction, to hold that the method is not "unfair." See *Federal Trade Commission v. Royal Milling Co.*, supra, [288 U.S.] at 217; *Federal Trade Commission v. Algoma Lumber Co.*, supra, [291 U. S. 67].

While this Court has declared that it is for the courts to determine what practices or methods of competition are to be deemed unfair, *Federal Trade Commission v. Gratz*, supra, in passing on that question the determination of the Commission is of weight. It was created with the avowed purpose of lodging the administrative functions committed to it in "a body specially competent to deal with them by reason of information, experience, and careful study of the business and economic conditions of the industry affected", and it was organized in such a manner, with respect to the length and expiration of the terms of office of its members, as would "give to them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience". Report of Senate Committee on Interstate Commerce, No. 597, June 13, 1914, 63d Cong., 2d sess., pp. 9, 11. See *Federal Trade Commission v. Beechnut Packing Co.*, supra, 257 U.S. 441, 453; compare *Illinois Central R.R. v. Interstate Commerce Commission*, 206 U.S. 441, 454. If the point were more doubtful than we think it, we should hesitate to reject the conclusion of the Commission, based as it is upon clear, specific and comprehensive findings supported by evidence.

We hold that the Commission correctly concluded that the practice was an unfair method of competition within the meaning of the statute. It is unnecessary to attempt a comprehensive definition of the unfair methods which are banned, even if it were possible to do so. We do not intimate either that the statute does not authorize the prohibition of other and hitherto unknown methods of competition or, on the other hand, that the Commission may prohibit every unethical competitive practice regardless of its particular character or consequences. New or different practices must be considered as they arise in the light of the circumstances in which they are employed.

Reversed.

**ARROW-HART & HEGEMAN ELECTRIC COMPANY v.
FEDERAL TRADE COMMISSION¹**

No. 363

(Argued February 8, 1934. Decided March 12, 1934)

CLAYTON ACT—CORPORATE ACQUISITION OF STOCK IN COMPETITORS—DISSOLUTION AND/OR MERGER OF HOLDING COMPANY PRECEDING ORDER—COMMISSION JURISDICTION.

Where, after Federal Trade Commission's complaint against holding company for acquisition of common stocks of competing corporations, whose preferred shares were owned by public, holding company transferred respective stocks to two new companies which issued their shares to holding company's stockholders and new companies merged with the two competing corporations, and holding company was dissolved, Federal Trade Commission was without jurisdiction to order merged corporation to divest itself of any fruits of merger (Clayton Act, secs. 7, 11; 15 USCA secs. 18, 21).

CLAYTON ACT—CORPORATE ACQUISITION OF STOCK IN COMPETITORS—COMMISSION POWERS—IN GENERAL.

Federal Trade Commission is administrative body possessing only such powers as are granted by statute.

CLAYTON ACT—CORPORATE ACQUISITION OF STOCK IN COMPETITORS—DISPOSITION OF UNLAWFULLY ACQUIRED STOCK PRECEDING ORDER—RELIEF—CONVEYANCE OR DISTRIBUTION OF OTHER PROPERTY.

Where shares acquired contrary to Clayton Act have been disposed of, Federal Trade Commission is without additional powers of court of equity to grant other and further relief by ordering property of different sort to be conveyed or distributed on theory that this is necessary to render effective the prescribed statutory remedy.

CLAYTON ACT—CORPORATE ACQUISITION OF STOCK IN COMPETITORS—DISSOLUTION AND/OR MERGER OF HOLDING COMPANY PRECEDING ORDER—RETENTION OF UNLAWFULLY ACQUIRED STOCK AFTER ORDER—ACQUISITION OF PROPERTY REPRESENTED BY.

Where shares acquired in violation of Clayton Act are retained by offending corporation notwithstanding order of divestiture, Federal Trade Commission may order that offender shall not acquire property represented by the shares.

CLAYTON ACT—CORPORATE ACQUISITION OF STOCK IN COMPETITORS—HOLDING COMPANY'S DIVESTITURE AND MERGER—RELIEF—COURTS.

Remedy for any violation of antitrust laws as result of merger following holding company's divestiture of stocks upon complaint of Federal Trade Commission must be sought in courts and not before the Commission.

(The syllabus, with substituted captions, is taken from
54 Sup. Ct. Rep. 532)

Proceeding by Commission against Arrow-Hart & Hegeman, Inc., and the Arrow-Hart & Hegeman Electric Co. Order that Arrow-

¹ Reported in 291 U.S. 587, 54 Sup. Ct. Rep. 532. For case before Commission see 16 F.T.C. 393.

Hart & Hegeman Electric Co., divest itself of ownership of part of stock and plants and properties received through merger of competing companies, affirmed by Court of Appeals for Second Circuit² and Arrow-Hart & Hegeman Electric Co. brings certiorari.

Reversed, Mr. Justice STONE, The CHIEF JUSTICE, Mr. Justice BRANDEIS, and Mr. Justice CARDOZO, dissenting.

Messrs. *Charles Neave*, of New York City, *Arthur L. Shipman*, of Hartford, Conn., *Arthur F. Mullen*, of Washington, D.C., and *Charles Welles Gross* and *Wallace W. Brown*, both of Hartford, Conn., for petitioner.

Messrs. *J. Crawford Biggs*, Solicitor General, of Washington, D.C., *Harold M. Stephens*, Assistant Attorney General, *Moses S. Huberman*, special assistant to Attorney General, and *Robert E. Healy*, chief counsel, Federal Trade Commission, and *Everett F. Haycraft*, of Washington, D.C., for respondent.

[589] Mr. Justice ROBERTS delivered the opinion of the court:

The Circuit Court of Appeals² affirmed an order of the Federal Trade Commission issued pursuant to Section 7 of the Clayton Act.³ A writ of certiorari was granted upon the claim of petitioner that the formation of a holding company which acquired all the voting shares of two manufacturing corporations was not in violation of the section, or, if it was, the merger of the two manufacturing corporations and dissolution of the holding company after complaint by the Federal Trade Commission deprived the latter of jurisdiction to make any order against the company formed by the merger. A proper understanding of these contentions requires a somewhat detailed statement of events prior and subsequent to the issuance of the complaint.

The Arrow Electric Co., hereafter called Arrow, and the Hart & Hegeman Manufacturing Co., hereafter called Hart & Hegeman, were Connecticut corporations engaged in the manufacture and sale in interstate commerce of electric wiring devices. Both were solvent and successful. There was no community of ownership of the stock of the two concerns. Each had valuable trade names by which its goods were known to consumers. [590] Shortly after the death of the principal stockholder, who was also the president, of

² 65 F. (2d) 336.

³ Act of Oct. 15, 1914, c. 323, sec. 7; 38 stat. 731; U.S.C. Title 15, sec. 18. The relevant paragraph is as follows:

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce."

Hart & Hegeman, the major interests in that company got into touch with those controlling Arrow, and after some negotiation it was agreed that economies could be effected if the business of both were brought under common control. In view, however, of the competition between the goods known by the names of the two manufacturing companies, it was thought that the trade names and the identity of the goods could best be preserved by retaining the separate corporate entities and the sales forces of the two organizations. The plan evolved was, therefore, that of a holding company which should own all of the common shares of both corporations, under the control of which the manufacturing and sales organizations should be kept separate and distinct and in competition with each other as theretofore. In order to bring about an equitable division of the stock of the proposed holding corporation, Arrow issued to its common stockholders a dividend in preferred stock. The recipients sold the preferred shares to a syndicate, which in turn sold them to the public. Hart & Hegeman increased its common stock and issued the new stock as a stock dividend. It also created an issue of preferred stock, which was sold to the public. Prior to the acquisition of the common stock by the holding company the capitalization was as follows:

Arrow—Common stock, \$750,000, par \$25. Preferred stock, \$2,000,000, par \$100.

Hart & Hegeman—Common stock, \$500,000, par \$25. Preferred stock, \$1,333,300, par \$100.

The holders of preferred stock in each company were without the right to vote for directors except upon default in the payment of six successive dividends, in which case the preferred stockholders were entitled to elect the board. In October, 1927, Arrow-Hart & Hegeman, Inc., hereafter called the holding company, was [591] organized under the laws of Connecticut. It had only common stock. The owners of all of the common shares of Arrow exchanged them for 120,000 shares of the stock of the holding company and the owners of all the common shares of Hart & Hegeman exchanged them for 80,000 shares of the same stock.

On March 3, 1928, the Federal Trade Commission issued a complaint in which it charged the effect of the holding and voting of all of the common shares of the two operating companies might be to substantially lessen competition between the companies in electrical wiring devices, to restrain commerce in those devices, and to create a monopoly. The holding company filed an answer traversing these allegations. Shortly thereafter counsel advised that the company be dissolved and its assets, consisting of the stock of Arrow and of Hart & Hegeman, be distributed amongst its stockholders, and that thereupon the two latter companies merge into a single corporation under

the laws of Connecticut, thus transferring to the new corporation to be formed by merger all of the assets of Arrow and of Hart & Hegeman.

It was discovered that such a program might cast heavy taxes upon the stockholders, and a modification was suggested to work out the plan in accordance with the reorganization sections of the Revenue Act of 1928. The stockholders of the holding company and the preferred stockholders of both the operating companies were notified of the original plan and of its modification, and proxies were asked so that their votes might be recorded at corporate meetings intended to be held to carry out the proposal. A two-thirds vote of both preferred and common stock is required by the law of Connecticut to authorize a merger.

In lieu of the original program of distribution of the shares owned by the holding company to its stockholders, the shares of Arrow were transferred to a new company, [592] called the Arrow Manufacturing Co., and those of Hart & Hegeman to another new company, known as the H. & H. Electric Co., against the issue of all of the shares of these companies respectively. The stock so to be issued by these two new holding companies was, by the direction of the original holding company, issued directly to its stockholders. As soon as this transfer of all its assets had been made to the two new holding companies by the old one, the latter by corporate action dissolved. Thereafter, pursuant to directors' action, the stockholders, preferred and common, of the four companies having an interest in the assets (Arrow, Hart & Hegeman, Arrow Manufacturing Co., and the H. & H. Electric Co.) approved a merger agreement whereby the petitioner, The Arrow-Hart & Hegeman Electric Co., was formed, which directly owned in its own right all of the assets formerly belonging to Arrow and to Hart & Hegeman. These transactions were consummated on or prior to December 31, 1928, except that the dissolution of the first holding company did not become final until April 11, 1929, the law of Connecticut providing that a final certificate of dissolution should not issue until four months after the filing of the resolution for dissolution.

January 11, 1929, counsel notified the Commission of the dissolution of the holding company and the formation of the petitioner. June 29, 1929, the Commission issued a supplemental complaint, entitled jointly against the holding company (the original respondent) and the petitioner (the corporation formed by the merger). After reciting in greater detail than above set forth the action taken, this complaint asserted that the formation of the petitioner was brought about by the contrivance and at the instigation of the holding company; that the conveyance of the stocks of Arrow and Hart

& Hegeman to the two new holding companies failed to restore the assets [593] to the ownership and control of separate groups in the manner the shares were held and controlled before the formation of the original holding company; that the result of the whole plan was not a restoration of competition as required by the act of Congress, and that the Commission's jurisdiction having timely attached could not be ousted by the steps subsequently taken.

Petitioner answered the supplemental complaint, the matter was heard, and the Commission made its findings. In addition to the facts above recited, the Commission found that at the time of the acquisition of the stocks of Arrow and Hart & Hegeman by the holding company, those corporations were in direct and substantial competition in interstate commerce, and after the formation of the holding company competition between them had been substantially curtailed. The Commission concluded: The acquisition by the holding company of the shares of the two manufacturing companies might substantially lessen competition between them, restrain interstate commerce, and create a monopoly; the divestment by the holding company was not a compliance with the Clayton Act; the petitioner was organized by the holding company, and its creation was an artifice to evade the provisions of Sections 7 and 11 of the Clayton Act; and the effect of the organization of the petitioner and "the acquisition by it of the common or voting stocks of" Arrow and Hart & Hegeman has been, is, and may be to suppress competition between the two manufacturing companies, to restrain interstate commerce, and to create a monopoly.

The Commission entered an order commanding the petitioner to cease and desist from violation of the provisions of Section 7 of the Clayton Act, and to divest itself "of all the common stock of" Hart & Hegeman "so as to include in such divestment" the said company's manufacturing plants and equipment, and all other property necessary to the conduct and operation thereof as a complete [594] going concern, and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of Hart & Hegeman; or, in the alternative, to divest itself of "all the common stock of" Arrow in the same manner. It was further ordered "that such divestment of the common stock or assets" of Arrow or Hart & Hegeman, as the case might be, should not be made directly or indirectly to the petitioner or any stockholders, officers, employees, or agents of or under the control of the petitioner.

The findings with respect to the effect of the acquisition and ownership by the holding company of the shares of the two manufacturing corporations are attacked as unsupported in fact and unjustified in law. The record is said to disclose that competition was not in fact diminished but preserved. And it is further argued that

if competition was or might be in some measure curtailed by the device of a holding company the result is unimportant and insignificant unless the public was injured, and not only is there a total absence of proof of injury to the public, but much affirmative evidence that consumers were benefited by reduction of prices consequent on manufacturing efficiency made possible by unified control.

It is unnecessary to discuss or to decide the questions thus raised, for we think the Commission lacked authority to issue any order against the petitioner.

Section 7 of the Clayton Act forbids any corporation to acquire the whole or any part of the share capital of two or more corporations, where the effect of the acquisition or the use of the stock by voting or otherwise may be to substantially lessen competition between such corporations, restrain competition in interstate commerce or create a monopoly in any line of commerce. Section 11⁴ specifies the remedy which the Commission may apply, [595] namely, that it may, after hearing, order the violator to divest itself of the stock held contrary to the terms of the act. The statute does not forbid the acquirement of property, or the merger of corporations pursuant to state laws, nor does it provide any machinery for compelling a divestiture of assets acquired by purchase or otherwise, or the distribution of physical property brought into a single ownership by merger.

If, instead of resorting to the holding company device, the shareholders of Arrow and Hart & Hegeman had caused a merger, this action would not have been a violation of the act. And if, prior to complaint by the Commission, the holding company, in virtue of its status as sole stockholder of the two operating companies, had caused a conveyance of their assets to it, the Commission would have been without power to set aside the transfers or to compel the reconveyance. *Thatcher Mfg. Co. v. Federal Trade Commission*, 272 U.S. 554, 560, 561.

Clearly, also, if the holding company had, before complaint filed, divested itself of the shares of either or both of the manufacturing companies, the Commission would have been without jurisdiction. And it might with impunity, prior to complaint, have distributed the shares it held pro rata amongst its stockholders. The fact that in such case the same group of stockholders would have owned shares in both companies, whereas theretofore some owned stock in one corporation only, and some held stock solely in the other, would not have operated to give the Commission jurisdiction. For if the holding corporation had effectually divested itself of the stock, the Commission could not deal with a condition thereafter developing

⁴ U.S.C. Title 15, sec. 21.

although thought by it to threaten results contrary to the intent of the act. Compare *National Harness Mfrs. Ass'n. v. Federal Trade Commission*, 268 Fed. 705; *Chamber of Commerce v. Federal Trade Commission*, 280 Fed. 45.

[596] Moreover, the holding company could have ousted the Commission's jurisdiction after complaint filed, by divesting itself of the shares, for that was all the Commission could order. And if it had so divested itself the transferees of the shares could immediately have brought about a corporate merger without violating the Clayton Act. We think that is precisely the legal effect of what was done in the present case. The holding company divested itself of the shares, and thereafter the owners of these common shares united with the holders of the preferred shares to bring about a merger.

The Commission apparently was doubtful of its authority to promulgate the order which it entered. This is evidenced by the terms of the findings and the order. In its final conclusion the Commission refers to "the acquisition by the said new respondent [the petitioner] through merger, of the common or voting stocks of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co. * * *", and denominates this a violation of Section 7 of the Clayton Act. This, of course, is in the teeth of the obvious fact that the petitioner never acquired the stock of either Arrow or Hart & Hegeman. In its order the Commission directs that the petitioner cease and desist from violation of the provisions of Section 7 of the act, and "divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Co. acquired by it as a result of the merger"; and then adds that it shall do this so as to include in such divestment the manufacturing plants and assets of Hart & Hegeman; and in the alternative the order applies to the stock and manufacturing plants of Arrow. This is a tacit admission that the Commission is without jurisdiction to act unless the alleged violator holds stocks of other corporations. The Commission's own findings show that the petitioner never held any stock of either company, but the [597] order, nevertheless, requires that the petitioner divest itself of those stocks.

The argument on behalf of the Commission is that while it is true the petitioner never owned any stock of Arrow or Hart & Hegeman, the holding company, against whom the complaint was originally directed, did hold such stocks in violation of the statute when the proceeding was initiated; and, instead of parting with the shares in good faith, ineffectually attempted to alter the status by initiating and carrying through the merger, the dissolution of which is the aim of the Commission's order.

We think the Commission's premise with respect to the activities of the holding company in bringing about the merger is without sup-

port. When the Commission filed its complaint those who had previously been the common stockholders of Arrow and Hart & Hegeman, respectively, had become the owners of the shares of the holding company. While those shares represented at two removed the physical assets of the enterprise, they nevertheless evidenced the equity ownership of those assets. At that time Arrow and Hart & Hegeman were still separate corporate entities, and about 73 percent of their outstanding capital stock was preferred stock held by the public, in no wise affected by the creation of the holding company. After the holding company had conveyed the Arrow stock to a new holding company, and the Hart & Hegeman stock to another new holding company, the only persons who could bring about a merger and consequent consolidation of assets were the preferred and common stockholders of Arrow and Hart & Hegeman. Under the laws of Connecticut two thirds of the outstanding stock of each class had to vote affirmatively to authorize a merger. While the holding company proposed the plan for accomplishing a merger, and sponsored the preliminary steps to that end, obviously that company had no power to consummate it. That power resided in the equity owners of the assets, the preferred and common stockholders of Arrow and Hart & Hegeman.

The common stockholders acted through the two holding companies, but the ultimate decision and action was theirs, through whatever instrumentality effected. Quite as vital to the accomplishment of the plan was the consent of preferred stockholders. It is true the consent was given through execution of proxies; but the shareholders were at liberty to give or to withhold their proxies, and it would be quite beyond reason to hold, as the Commission suggests, that all corporate entities and all stockholder relationship to the property should be disregarded and the original holding company be treated as the sole and efficient agent in the accomplishment of the merger. To do this would be to disregard the actualities, including the fact that the holding company had been effectually dissolved before the merger was voted upon by any of those having an equity interest in the assets.

But if we assume that the holding company against which the complaint was originally directed, brought about a change in legal status, so that before the Commission acted, that company ceased to exist, as did the shares it formerly owned, and a corporation formed by merger held all the assets in direct ownership, the respondent's position is no better. The Commission is an administrative body possessing only such powers as are granted by statute. It may make only such orders as the act authorizes; may order a practice to be discontinued and shares held in violation of the act to be disposed of; but, that accomplished, has not the additional powers of a court

of equity to grant other and further relief by ordering property of a different sort to be conveyed or distributed, on the theory that this is necessary to render effective the prescribed statutory remedy. Com[599]pare *Federal Trade Commission v. Eastman Kodak Co.*, 274 U.S. 619, 623. Where shares acquired in violation of the act are still held by the offending corporation an order of divestiture may be supplemented by a provision that in the process the offender shall not acquire the property represented by the shares. *Federal Trade Commission v. Western Meat Co.*, 272 U.S. 554. In the present case the stock which had been acquired contrary to the act was no longer owned by the holding company when the Commission made its order. Not only so, but the holding company itself had been dissolved. The petitioner, which came into being as a result of merger, was not in existence when the proceeding against the holding company was initiated by the Commission, and never held any stock contrary to the terms of the statute. If the merger of the two manufacturing corporations and the combination of their assets was in any respect a violation of any antitrust law, as to which we express no opinion, it was necessarily a violation of statutory prohibitions other than those found in the Clayton Act. And if any remedy for such violation is afforded, a court and not the Federal Trade Commission is the appropriate forum. Compare *Federal Trade Commission v. Western Meat Co.*, *supra*.

The judgment is reversed.

Mr. Justice STONE, dissenting.

I think the decree should be affirmed.

While this proceeding was pending before the Federal Trade Commission to compel a holding company to divest itself of the controlling common stock of two competing corporations which it had acquired in violation of Section 7 of the Clayton Act, that stock was used to effectuate a merger of the competing corporations. It is now declared that, however gross the violation of the Clayton Act, how[600]ever flagrant the flouting of the Commission's authority, the celerity of the offender, in ridding itself of the stock before the Commission could complete its hearings and make an order restoring the independence of the competitors, leaves the Commission powerless to act against the merged corporation. This is the case, it is said, because the Clayton Act does not, in terms, forbid mergers, which may be formed by the stockholders of independent competing corporations; and, since the holding company was not the "sole and efficient agent in the accomplishment of the merger", which was effected upon the consent of the various classes of stockholders of the merged companies, it is concluded that the holding company, by its divestment of the stock, complied with the Clayton

Act and in effect did "all the Commission could order", so there is no longer any ground for complaint. Further, notwithstanding the authority broadly conferred on the Commission "to enforce compliance" with Section 7 "whenever * * * any person * * * has violated" its provisions, it is said that as the statute in terms specifies only a single method by which compliance can be compelled—ordering the offender to divest itself of the stock—the Commission can make no other form of order.

Apart from the objection that the decision now reached is calculated to encourage hasty and ill considered action by the Commission in order to avoid defeat of its jurisdiction by the adroit manipulations of offenders against the Clayton Act, I am unable to construe so narrowly a statute designed, as I think, to prevent just such suppression of competition as this case exemplifies.

1. It is true that the Clayton Act does not forbid corporate mergers, but it does forbid the acquisition by one corporation of the stock of competing corporations so as substantially to lessen competition. It follows that mergers effected as they commonly are, through such acquisition of stock necessarily involve violations of the act, as this one did. Only in rare instances would there be hope of a successful merger of independently owned corporations by securing the consent of their stockholders in advance of the acquisition of a working stock control of them. Hence the establishment of such control by the purchase or pooling of the voting stock, often effected in secrecy, is the normal first step toward consolidation. It is by this process that most corporate consolidations have been brought about, often by adding one consolidation to another through periods of years. Compare *Standard Oil Co. v. United States*, 221 U.S. 1; *United States v. American Tobacco Co.*, 221 U.S. 106; *United States v. United States Steel Corp.*, 251 U.S. 417; see Bonbright and Means, *The Holding Company*, 30, 50.

Unless we are to close our eyes to this open chapter in the record of corporate concentration, an examination of the legislative history of the Clayton Act, and that of the earlier Sherman Act, can leave no doubt that the former was aimed at the acquisition of stock by holding companies not only as itself a means of suppressing competition but as the first and usual step in the process of merging competing corporations by which a suppression of competition might be unlawfully perpetuated. Thus one of the evils aimed at, the merger of competing corporations through stock control, was reached in its most usual form by forbidding the first step, the acquisition of the stock of a competing corporation, and by conferring on the Trade Commission authority to deal with the violation. It seems plain, therefore, that the illegality involved in acquiring the common stock of the competing companies, which

was the first step toward the merger, was neither lessened nor condoned by taking the next and final steps in completing it. There is, then, no basis for contending that the act has not been violated, or that [602] the violation has been excused simply because events were pushed to the very conclusion that Section 7 was designed to forestall.

2. It is also true that the holding company divested itself of the stock of the two competing operating companies before the Commission had an opportunity to make its order; but it does not follow that it had done all that the Commission could command and that thus the statute was satisfied. Mere divestment of the stock is not enough. The manner of divestment is likewise subject to the requirements of the Clayton Act. This Court has recognized that the purpose of the act is to restore the competition suppressed by the acquisition of the stock and has specifically held, over objections such as are now made, that the Commission has power not only to order divestment but to prescribe that it shall be done in a manner that will restore competition. *Federal Trade Commission v. Western Meat Co.*, 272 U.S. 554.

Here the Commission has held that the divestment was not a compliance with the statute. In determining whether it was right in this conclusion, the manner of divestment and the activity of the holding company after the complaint of the Commission was filed and before the final merger of the two operating companies are of crucial significance.

When the complaint was filed the holding company was in complete control of the two operating companies through ownership of their common stock, which alone had voting power. From the moment of the acquisition of the stock it had been and it continued to be a violator of the Clayton Act. Promptly after the complaint was filed it took measures to secure the fruits of its violation. It first proposed by letter to its stockholders a consolidation of the two operating companies, and at a special meeting its board of directors formulated a detailed plan for merger. This plan involved the organization of the two [603] new holding companies, the transfer to them respectively by the first holding company of its respective holdings of the common stock in the two operating companies in exchange for the distribution by the new holding companies of their stock to the stockholders of the first holding company. Thus for each share in the first holding company owned by its stockholders they were to receive one share in each of the new holding companies. The original holding company was then to be dissolved and the four remaining companies, the two new holding companies and the two operating companies, were to be merged.

The plan from the beginning, contemplated that the four companies should be bound by formal agreement to effect the merger.

It was adopted at a specially called meeting of the stockholders of the first holding company and was carried into effect under its active direction and control. Before its dissolution, by exercising that control it had created the two new holding companies, committed all four of its subsidiary corporations to the merger both by their corporate action and by binding agreement, and had secured the approval of its action by its own stockholders. It will be observed that the original holding company did not divest itself of the stock of the two competing operating companies in the only manner by which competition could have been restored—by returning the stock to the respective stockholders of the operating companies, from whom it had been secured, or to their successors. Instead, it continued the suppression of competition by placing the stock of the two operating companies respectively in control of the two new holding companies, tied by contract to effect the merger, and by the method of distributing the stock of the new holding companies equally to its own stockholders it lodged common ownership and control of both the new holding companies in the two groups of stockholders of the original operating companies. The first holding company created the two new [604] ones and throughout guided their policy, as it did that of the two operating companies. Acting in concert and in accord with the prearranged plan, all cooperated in executing it, and all, together with their creature, the merged company, were conscious beneficiaries of the violation of the statute.

By thus manipulating its illegally acquired stock control of the operating companies, the first holding company avoided such a distribution of the stock as would have restored competition, and made easy the merger which, if the stock had been returned to those from whom it had originally been acquired, would have been difficult or impossible. Upon these and other facts, which need not now be detailed, the Commission made its finding, abundantly supported by evidence, that the course of action taken by the holding company was not to restore competition between the operating companies, but was "an artifice and subterfuge designed in an attempt to evade the Clayton Act, to perpetuate the elimination of competition" which it had brought about by the acquisition of the stock of the operating companies.

That the stockholders in the successive holding companies, who were the ultimate owners of the operating companies, consented to all this; that two thirds of the nonvoting preferred stock of the operating companies which had never been lodged in the holding companies consented to it; that the merger might possibly have been effected in some other way, had competitive conditions been restored; all seems without significance. While under local statutes merger could not have been effected without the consent of the preferred

stock, equally the consent of the stock acquired through violation of the Clayton Act and its active promotion of the merger were essential to the desired end. A prohibited act is no less illegal because its success involves the cooperation of other actors. It was the suppression of competition [605] by the holding company, through the use which it made of the illegally acquired stock of the operating companies, and its manner of disposing of the stock so as to continue that suppression, which were violations of the Clayton Act and in conflict with the authority of the Commission. This was not any the less so because others consented.

Doubts whether the divestment effected by the first holding company was all that the Commission could have ordered are dissipated by our decision in *Federal Trade Commission v. Western Meat Co.*, *supra*. There we upheld an order of divestment which directed that in transferring the stock the respondent corporation could not use it to acquire any of the property of the competing corporation, and that none of the stock could be transferred to anyone having any connection with or in any way under the influence of the offending corporation. Here we need not go so far.

3. There remains the question whether the Commission is now powerless to undo a consummation which, at an earlier stage, it could have prevented. It is said, as a matter of statutory construction, that the grant to the Commission of specific power to command offenders to divest themselves of illegally acquired stock excludes the possibility of its ordering anything more or different, however incidental or necessary it may be to the exercise of the granted power.

It would seem that this point also had been settled by our decision in the *Western Meat Co. case*, where the offending company, through stock ownership, had acquired possession of the property and control of the business of a competitor. It wished to be free to divest itself of the stock without restriction, in order that it might acquire ownership of the competitor's property by transferring the stock to hands that would make merger easy. It was argued to us there, as it is here, that the statute [606] provides only that the Commission may order divestment of the stock; that it does not say that the Commission can command relinquishment of the power, derived from the stock ownership, to bring the competitor, or its property, under the control of the offending corporation, either directly or through transfer of the stock into friendly hands. But that argument was rejected, and the order directing divestment of both the property and stock by placing both in the hands of those not under the influence or control of the offender was upheld. This Court said, page 559:

Further violations of the act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had

been wrongfully suppressed. The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. And the same result would follow a transfer to one controlled by or acting for the respondent.

No more here, than there, should it be said that the purpose of the statute must be defeated because the lawmakers did not attempt to provide with a meticulous precision how the Commission should proceed in every contingency that might arise. The dominating purpose of the statute is to restore to its original state the competition suppressed by the acquisition of the stock, and, just as we rejected a rigid literalism there in order to effect that purpose, and upheld an order which was but incidental, though necessary, to the effective exercise of the power specifically granted, so we should reject it now. Just as in that case we upheld the Commission's order directing the surrender of one of the fruits of the wrongful stock ownership—the power to place a competing unit under the offender's domination—so should we now sus[607]tain the order commanding relinquishment of another of the fruits of that ownership—the accomplished merger.

Even if the question were a new one in this Court, no plausible reason has been advanced for interpreting this remedial statute as though it were a penal law. The Clayton Act was designed to prevent abuses growing from deficiencies due to the generality of the Sherman Act. It sought to accomplish that end by conferring upon the Commission the power to strike at specific practices. In this, as in most schemes for regulation by administrative bodies, there must be a balance between the general and the particular. When the courts are faced with interpretation of the particular, administration breaks down and the manifest purpose of the legislature is defeated unless it is recognized that, surrounding granted powers, there must be a penumbra which will give scope for practical operation. In carrying such schemes into operation the function of courts is constructive not destructive, to make them, wherever reasonably possible, effective agencies for law enforcement and not to destroy them.

That the merged corporation is different from the original offender should lead to no different conclusion. It is but the creature and *alter ego* of the offender, created by the offender's exercise of power over the illegally acquired stock for the very purpose of perpetuating the suppression of competition which the Commission from the start had power to forbid. To declare that an offender, whose cause is pending before the Commission, can effect through its creatures and agents what it may not itself do, nullifies the statute.

Some scope may be given to the doctrine of *lis pendens*. It is true that the Commission is an administrative body, and not a court. But

it exercises many of the powers conventionally deemed judicial. It is authorized to bring offenders before it to determine whether they are violators of the act and, if so, "to enforce compliance" by [608] commanding that the violation cease. There is as much reason to believe that Congress did not intend to deny to the Commission the authority to exercise effectively the granted power, and thus to preserve its jurisdiction until its function could be executed, as there would be were similar powers extended to a court of inferior jurisdiction. This is the more evident when it is remembered that obedience to the Commission's orders cannot be compelled without first subjecting them to the scrutiny of a court. Recognition of its authority involves neither departure from accepted principles nor any risk of abuse.

These considerations demand our rejection of the contention that an offender against the Clayton Act, properly brought before the Commission and subject to its order, can evade its authority and defeat the statute by taking refuge behind a cleverly erected screen of corporate dummies.

The CHIEF JUSTICE, Mr. Justice BRANDEIS, and Mr. Justice CARDOZO concur in this opinion.

FEDERAL TRADE COMMISSION *v.* INECTO, INC.

(Circuit Court of Appeals, Second Circuit. April 2, 1934)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½

In proceeding by Federal Trade Commission to enforce cease and desist order, where respondent contended it would be necessary to examine entire testimony before Commission, Commission *held* required to print transcript of entire record, though some issues had been determined in respondent's favor by Commission and were no longer in issue (Federal Trade Commission Act Sec. 5; 15 USCA Sec. 45; Rules of Circuit Court of Appeals, Second Circuit, Rule 21, subd. 2).

(The syllabus is taken from 70 F. (2d) 370)

Petition of Commission for enforcement of its order.¹ On motion by it for leave to present cause without printing all the evidence heard by it. Motion denied.

Robert E. Healy, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, and *Henry Miller*, special attorney, of Washington, D.C., for petitioner.

Hulbert & Heermance, of New York City (*Murray Hulbert*, of New York City, of counsel), for respondent.

Before MANTON, SWAN, and CHASE, Circuit Judges.

¹ See 16 F.T.C. 193.

PER CURIAM:

Under Section 5 of the Federal Trade Commission Act, the Commission is required to file in this court, a transcript of the entire record in a proceeding for the enforcement of an order made by the Commission to cease and desist a practice of the respondent in its business.

Section 5 provides that this court has jurisdiction 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." (See *Federal Trade Commission v. Balme*, 23 F. (2d) 615; CCA 2).

The court will have no occasion to resort to the record on which the findings were based, unless it be asserted by the respondent that the order is not supported by the evidence. *National Harness Mfrs Ass'n v. Federal Trade Commission*, 261 Fed. 170 (CCA 6). Upon our review, it will be our duty to ascertain whether such finding is supported by any evidence, if it be challenged. Petitioner asserts that part of the issues of fact tried in this case were determined in favor of the respondent and are no longer in issue; that there will be no occasion to consider any portion of that evidence concerning these issues. The petitioner asks to print only so much of the evidence as it relies upon to support any finding or findings which bear upon the issues to be presented to this court.

Rule 21, subdivision 2 of this court, an application for the enforcement of an order, requires that the transcript of the entire record shall be printed and unless the parties agree [371] upon printing less, we cannot do otherwise than require all the testimony to be printed as constituting the record for our review. Contentions are made by respondent that it would be necessary to examine it all to ascertain if there is a violation of the order to cease and desist. The one way that we can answer that inquiry is by reading the entire record and this we can only do if it is before us in the form required by our rule.

Motion denied.

APPENDIX

FEDERAL TRADE COMMISSION ACT
CLAYTON ACT
EXPORT TRADE ACT
SHERMAN ANTITRUST ACT
NATIONAL RECOVERY ACT
EXECUTIVE ORDER OF JANUARY 20, 1934¹
STURTEVANT ICE CREAM CO.²
RULES OF PRACTICE

¹ Relating to N. R. A. cases before the Commission.

² Jurisdiction of Commission re complaint relative to marketing agreement under Agricultural Adjustment Act.



FEDERAL TRADE COMMISSION ACT¹

[Approved Sept. 6, 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 U.S.C.A., 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 com[718]posed of five commissioners, who shall be

¹ Reported decisions of the courts for the period covered by this volume (June 19, 1933, to Apr. 23, 1934, inclusive) and arising under this act, are printed in full at p. 663 et seq. Previously reported decisions have been published, as handed down from time to time, in the different volumes of the Commission's Decisions. Such court 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", subsequent decisions being reported in volume 13 and later volumes, of the Commission's decisions.

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 (7 U.S.C.A. 227) 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."

For legislation establishing certain exceptions, as respects the operation of the antitrust laws, see footnote on p. 32 dealing with certain provisions relating to shipping and other carriers, and to agricultural and fisheries associations.

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins, from the Committee on Interstate Commerce, on control of corporations, persons, and firms

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

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

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. 10, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington, from the House Committee on Interstate and Foreign Commerce, on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report, presenting the minority views, respectively, of Messrs. Stevens and Lafferty; report of Senator Newlands, from the Committee on Interstate Commerce, on Federal Trade Commission (June 13, 1914., 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849, 9068, 14925-14933 (part 15); Dickinson for part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N.H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for. 8849-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11180-11189 (part 11); 11232-11237; 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 1220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13105, 13290-13301; Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13148; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389, 11447-11458 (part 12), 11528-11530, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (part 15); Hoolls 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); Lippit against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for, 9930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14787-14791 (part 15); Robinson for, 11107 (part 11), 11228-11232; Saulsbury for, 11185, 11591-11594 (part 2); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 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, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H.R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H.R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 420-442. (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.)

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 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.

Term, seven years.

Chairman to be chosen by commission.

Pursuit other business prohibited. Removal by President.

Vacancy not to impair exercise of power by remaining commissioners.

The commission shall have an official seal, which shall be judicially noticed.

Seal judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICERS. (38 Stat. 718; 15 U.S.C.A., sec. 42.)

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.

Commissioner's salary, \$10,000.

Appointment of secretary. Salary, \$5,000.

Other employees. Salaries fixed by Commission.

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

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS, OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES. (38 Stat. 718; 15 U.S.C.A., sec. 43.)

Bureau of Corporations absorbed by Commission.

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 pending 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 U.S.C.A., 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” means any company or association “Corporation.” 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, “Documentary evidence.” and correspondence in existence at and after the passage of this Act.

“Acts to regulate commerce” means the Act entitled “Acts to regulate commerce.” “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 “Antitrust acts.” “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July second, eighteen hundred and ninety;² also the sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes”, approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes’”, approved February twelfth, nineteen hundred and thirteen.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE. (38 Stat. 719; 15 U.S.C.A., sec. 45.)

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except Commission to prevent. Banks and common carriers excepted.

¹ For text of Sherman Act, see p. 755.

² Jurisdiction of Commission under this section limited by sec. 406 of the “Packers and Stockyards Act, 1921,” approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See third paragraph of footnote on p. 709.

Provisions against unfair methods of competition extended by Export Trade Act (see sec. 4, p. 751) to include such methods, used in export trade against competitors.

banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Commission to issue complaint when unfair method used and to public interest.

To serve same on respondent with notice of hearing.

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.

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. 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 cir-

cuit 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.

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

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on Commission. 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.

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.

Proceedings to have precedence over other cases. 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 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 anti-trust acts.⁴

Liability under antitrust acts not affected. 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.

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.

⁴For text of Sherman Act, see p. 755. As enumerated in last paragraph of sec. 4 of this act, see p. 713.

Sec. 6. FURTHER POWERS,⁵ (38 Stat. 721; 15 U.S.C.A., sec. 46.)

Sec. 6. That the commission shall also have power—

(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 gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, 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.

To require annual or special reports from corporations, except banks and common carriers.

Such reports to be under oath, or otherwise, and filed within such reasonable period as Commission may prescribe.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General, it shall be its duty to make such inves-

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

⁵ Public, No. 78, 73d Cong., approved June 16, 1933, making appropriations for the fiscal year ending June 30, 1934, for the "Executive Office and sundry independent executive bureaus, boards, commissions", etc., made the appropriation for the Commission contingent upon the provision (48 Stat. 291; 15 U.S.C.A., sec. 46a) that "hereafter no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress."

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 (7 U.S.C.A. 222).

To transmit findings and recommendations to Attorney General.

To investigate, on direction of President or either House, alleged violations of antitrust acts.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

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.

To classify corporations, and make rules and regulations incidental to administration of Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

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.

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.

(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.

(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.

(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.

(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.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY. (38 Stat. 722; 15 U.S.C.A., sec. 47.)

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.

Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS. (38 Stat. 722; 15 U.S.C.A., sec. 48.)

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.

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT. (38 Stat. 722; 15 U.S.C.A., sec. 49.)

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.

Commission to have access to documentary evidence and right to copy same.

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

In case of contumacy or disobedience of subpoena, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

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.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

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.

Commission may order depositions at any stage.

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.

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.

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.

Witness fees same as paid for like services in United States courts.

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.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES. (38 Stat. 723; 15 U.S.C.A., sec. 50.)

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Failure to testify or to produce documentary evidence.

Offender subject to fine or imprisonment, or both.

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.

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.

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 Gen-

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.

eral 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.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

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.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE. (38 Stat. 724; 15 U.S.C.A., sec. 51.)

Not affected by this act.

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.

Approved, September 26, 1914.

CLAYTON ACT¹

[Approved Oct. 15, 1914]

[PUBLIC—No. 212—63D CONGRESS]

[H.R. 15657]

AN ACT TO supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS. (38 Stat. 730; 15 U.S.C.A., 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 ^{"Antitrust laws."}

¹Reported decisions of the courts for the period covered by volumes I—XIII, inclusive, of the Commission's decisions (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 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) 162; *Sidney Morris & Co. v. National Association of Stationers, etc.*, 40 F. (2d) 620 (C.C.A.).

Decisions handed down subsequent to aforesaid period and during period covered by volumes 14—18, i.e., May 5, 1930, to Apr. 23, 1934, include the following: *Pittsburgh & W.Va. Ry. v. U.S.*, 281 U.S. 479, 483, 484, 488; *American Can Co. v. Ladoga*, 44 F. (2d) 763; *Radio Corporation of America v. DeForest Radio Co.*, 47 F. (2d) 606; *Carbice Corporation of America v. American Patents Development Corporation et al.*, 283 U.S. 27; *Gutterman v. Penn. R.R. Co. et al.*, 48 F. (2d) 851; *Radio Corp. of America v. DeForest Radio Co.*, 283 U.S. 847 (denying certiorari); *U.S. Navigation Co. v. Cunard S.S. Co.*, 50 F. (2d) 83, 284 U.S. 474; *Peterson v. Borden Co.*, 50 F. (2d) 644; *Temple Anthracite Coal Co. v. F.T.C.*, 51 F. (2d) 656 (see also 15 F.T.C. 616).

Hand v. Kansas City So. Ry. Co., 55 F. (2d) 712; *V. Vivaudou, Inc., v. F.T.C.*, 54 F. (2d) 273 (see also 15 F.T.C. 631); *Atwater v. Wheeling & L. E. Ry. Co.*, 56 F. (2d) 720, 722; *F.T.C. v. Paramount Famous Lasky Corp. et al.*, 57 F. (2d) 152 (see also 16 F.T.C. 660); *Gibson Canning Co. v. American Can Co.*, 1 F. Supp. 242; *Arrow-Hart & Hegeman Elec. Co. v. F.T.C.*, 63 F. (2d) 108 (see also 17 F.T.C. 658); *Flectway v. Public Service Interstate Transp. Co.*, 4 F. Supp. 482; *Clare v. Ice Cream Cabinet Co., Inc.*, (N.J. Ch.), 166 At. 722; *Arrow-Hart & Hegeman Elec. Co. v. F.T.C.*, 65 F. (2d) 336 (see also 17 F.T.C. 683); and *Pennsylvania R. Co. v. I.O.C.*, 66 F. (2d) 37.

Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved

Stanley Co. v. A. T. & T. Co., 4 F. Supp. 80, 5 F. Supp. 380; *Carbonio Gas Co., etc. v. Pure Carbonio Co., etc.*, 4 F. Supp. 992; *Alemite Corp. v. Rogers*, 5 F. Supp. 940; *American Equipment Co. v. Tutthill*, 69 F. (2d) 406; *Arrow-Hart & Hegeman Elec. Co. v. F.T.C.*, 291 U. S. 587, (see this volume at p. 691); and *Pa. R. Co. v. I.C.C.*; Mar. 19, 1934, 291 U. S. 651, 54 S. Ct. 559.

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; 46 U.S.C.A. 814) 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 * * *."

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 (7 U.S.C.A. 227) 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; 49 U.S.C.A. 5 (8) the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, insofar as the provisions of the section in question, which relate to division of traffic, acquisitions by a carrier of control of other carriers and consolidations of railroad systems or railroads, are concerned.

AGRICULTURAL AND FISHERY ASSOCIATIONS

Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388; 7 U.S.C.A. 291, 292), permits, subject to the provisions set forth, including necessary corrective action by the Secretary of Agriculture for undue price enhancement, 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 (7 U.S.C.A. 455).

Public No. 464, 73d Cong., approved June 25, 1934 (48 Stat. 1213, 15 U.S.C.A., sec. 166-1), permits, subject to provisions set forth, including similar corrective action by the Secretary of Commerce, associations of persons engaged in the fishery industry for the purpose of "collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged."

July second, eighteen hundred and ninety;² 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-^{"Commerce."}merce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in^{"Person" or "persons."}this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.³ (38 Stat. 730; 15 U.S.C.A., sec. 13.)

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 Colum-^{Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.}

²The Sherman Act (26 Stat 209; 15 U.S.C.A. 1 et seq.), which as a matter of convenience is printed herewith on p. 755 et seq.

³On 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 p. 724.

bia 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:

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

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 [731] commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES, OR CONTRACTS.⁴ (38 Stat. 731; 15 U.S.C.A., 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 rebate 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.

⁴ 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 p. 724.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED. (38 Stat. 731; 15 U.S.C.A., 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 ^{May sue in any United States district court, and recover threefold damages, including cost of suit.} ^{*} 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.

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 U.S.C.A., 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.}

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. ^{Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.}

^{*} For text of Sherman Act, see p. 755. As enumerated in Clayton Act, see first paragraph thereof on pp. 723-725.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE. (38 Stat. 731; 15 U.S.C.A., 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.* (38 Stat. 731; 15 U.S.C.A., sec. 18.)

Of other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or 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 [732] 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.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

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.

* 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 p 724.

It should be noted also that corporations for export trade are excepted from the provisions of this section under the Export Trade Act. (See sec. 3, p. 750, infra.)

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 or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

Sec. 8. INTERLOCKING DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS. (38 Stat. 732; 15 U.S.C.A., 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 [733] lawful for him to continue as such for one year thereafter under said election or employment.

Not to serve more than one bank, banking association or trust company located in city or

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

* By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756 (12 U.S.C.A. 605), 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 p. 724.

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:⁸ *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.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been

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.

Consent may be secured before applicant elected director.

⁸ That part of the preceding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1929, ch. 581.

elected as a class A director of a Federal reserve bank or as a director of any member bank.*

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.

* 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, 1918, ch. 120, act of May 26, 1920, ch. 206, and act Mar. 9, 1923, 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.¹⁰ (48 Stat. 194; 15 U.S.C.A., 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 U.S.C.A., 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.

[734] 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.

¹⁰ 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, WHOSE INTERLOCKING DIRECTORS, ETC. (38 Stat. 734; 15 U.S.C.A., 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.

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.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

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.

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.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions

it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

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 a 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.¹¹

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.¹² (38 Stat. 734; 15 U.S.C.A., 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 subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Federal Reserve Board where applicable to banks, banking associations and trust companies; and in the Federal Trade Commission where applicable to

Jurisdiction as respectively applicable, vested in

Interstate Commerce Commission;

Federal Communications Commission;

Federal Reserve Board; and

Federal Trade Commission.

¹¹ Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

¹² 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 p. 724.

all other character of commerce, to be exercised as follows:¹³

¹³The foregoing paragraph is published as amended by sec. 602 (d) of the Communications Act of 1934, approved June 19, 1934. (Public No. 416, 73d Cong.), establishing a Federal Communications Commission, to regulate interstate and foreign commerce in communication by wire and radio.

SEC. 212 of said Act, relating in part to "interlocking directorates" provides, as to this, that "after sixty days from the enactment of this Act it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this Act, unless such holding shall have been authorized by order of the [said] Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby."

SEC. 311 directs the said commission to refuse a station license and/or permit to any person whose license has been revoked by a court under Sec. 313 (as set forth below); authorizes the said commission so to do in case of any other person adjudged guilty by a Federal court of unlawfully monopolizing or attempting to monopolize radio communications, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition; and provides that granting of a license shall not estop public or private proceedings for violation of such laws, or corporate dissolution.

SEC. 312 (a) provides, among other things, that a license may be revoked on grounds which would have warranted said commission in refusing to grant a license in the first instance, or for failure to observe the restrictions and the conditions of the Act or regulations of said commission thereunder.

SEC. 313 makes applicable to manufacture and sale of, and trade in, radio apparatus and devices entering into or affecting interstate or foreign commerce, and interstate or foreign radio communications, all laws of the United States relating to unlawful restraints and monopolies, and combinations, contracts or agreements in restraint of trade, and provides further that when a licensee shall be found guilty of violating the provisions of any such laws, or in any proceeding to enforce or review findings of the Federal Trade Commission or other governmental agency in respect of matters entrusted thereto, the court, in addition to other penalties imposed by the laws involved, may "adjudge, order and/or decree" the revocation of the license of such licensee.

SEC. 314 provides that after the effective date of the Act, no person engaged, directly or indirectly in the "business of transmitting and/or receiving for hire, energy, communications or signals by radio in accordance with the terms of the license" issued under the Act, shall, directly or indirectly, by stock acquisition or otherwise, as in detail set forth, acquire an interest in or control of any cable or wire system between any place in any State, or Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, where the intent and/or effect thereof "may be to substantially lessen competition or to restrain commerce" between such places, or "unlawfully to create monopoly in any line of commerce", and similarly provides that no person, engaged directly or indirectly in the business of transmitting and/or receiving for hire messages by wire in interstate or foreign communication, shall acquire, directly or indirectly, by stock acquisition or otherwise, as in detail set forth, any station or apparatus or system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, where the purpose and/or effect thereof may be to substantially lessen competition or restrain commerce between such places, "or unlawfully to create monopoly in any line of commerce."

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right [735] to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist 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 bearing 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.

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist, etc., on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

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

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

Findings of commission or board conclusive if supported by testimony.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on commission 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 com-

proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendations, 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.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forth[763]with 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.

mission's or board's findings similarly conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Jurisdiction of Court of Appeals exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.¹⁴

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal 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.

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.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS, SERVICE OF PROCESS. (38 Stat. 736; 15 U.S.C.A., sec. 22.)

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.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

¹⁴ For text of Sherman Act, see p. 755. As enumerated in Clayton Act, see first paragraph thereof on pp. 723-725.

Sec. 13. SUBPOENAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS. (38 Stat. 736; 15 U.S.C.A., sec. 23.)

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of 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.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS. (38 Stat. 736; 15 U.S.C.A., sec. 24.)

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

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 U.S.C.A., sec. 25.)

District attorneys, under direction of Attorney General, to institute proceedings. Proceedings may be by way of petition setting forth the case, etc.

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 com[737]plained of shall

have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS. (38 Stat. 737; 15 U.S.C.A., sec. 26.)

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against 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 provision 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.

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.

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 23 U.S.C.A., sec. 381.)

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Sec. 266 not affected.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such 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.

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.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An [738] Act to codify, revise, and amend the laws relating to the judiciary", approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY. (38 Stat. 738; 28 U.S.C.A., 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 U.S.C.A., sec. 383.)

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT. (38 Stat. 738; 29 U.S.C.A., sec. 52.)

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.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Acts specified in this paragraph not to be considered violations of any law of the United States.

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.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT. (38 Stat. 738; 28 U.S.C.A., sec. 336.)

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.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES. (38 Stat. 738; 28 U.S.C.A., 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 reason-

able 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 [739] show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make re-

Court or judge may issue rule to show cause why person charged should not be punished.

turn 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.

Trial if alleged contempt not sufficiently purged by return.

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.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

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

Trial may be by court, or upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured.

If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail.

Proceedings thereafter same as if rule had issued.

exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 23. EVIDENCE. APPEALS. (38 Stat. 739; 28 U.S.C.A., sec. 388.)

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SECTION 21 NOT AFFECTED. (38 Stat. 739; 28 U.S.C.A., sec. 389.)

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, etc.

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 [740] 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.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.
(38 Stat. 740; 28 U.S.C.A., 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.

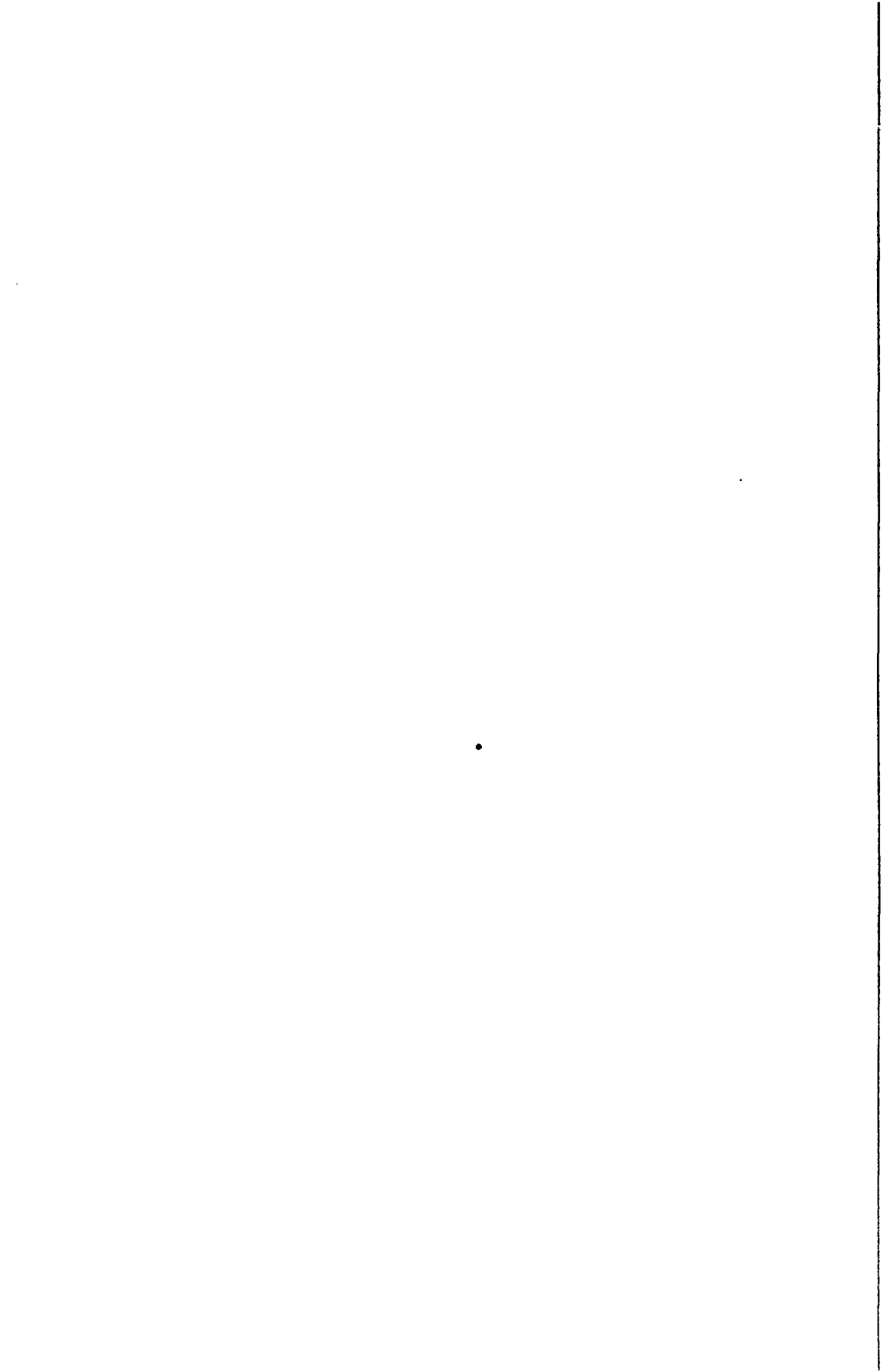
Must be instituted within one year.
Not a bar to criminal prosecution.
Pending proceedings not affected.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT. (38 Stat. 740; 15 U.S.C.A., sec. 27.)

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

But to be confined to clause, sentence, etc., directly involved.

Approved, October 15, 1914.



EXPORT TRADE ACT¹

[Approved Apr. 10, 1918]

[PUBLIC—No. 126—65TH CONGRESS]

[H.R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS. (40 Stat. 516; 15 U.S.C.A., 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 means solely trade or commerce in goods, "Export trade," 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 [517] such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words "trade within the United States" "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

¹ In this general connection, i.e., regulation and promotion of export trade, mention should 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 (15 U.S.C.A. 72).

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 anti-trust 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.

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.

"Association."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW. (40 Stat. 517; 15 U.S.C.A., sec. 62.)

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July second, eighteen hundred and ninety,² shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Association not illegal if organized for and engaged in export trade solely.

Nor agreement nor act,

If not in restraint of trade within the United States, or of the export trade of any domestic competitor, and if such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION. (40 Stat. 517; 15 U.S.C.A., sec. 63.)

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October fifteenth, nineteen hundred and

² For text of Sherman Act, see p. 755.

fourteen,³ shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

Sec. 4. FEDERAL TRADE PROVISIONS EXTENDED TO EXPORT TRADE COMPETITORS. (40 Stat. 517; 15 U.S.C.A., sec. 64.)

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September twenty-sixth, nineteen hundred and fourteen,⁴ shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Unfair methods prohibited.

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 U.S.C.A., 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

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.

³ See *ante*, p. 728.

⁴ See *ante*, p. 713.

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.

To furnish also information as to organization, business, etc.

It shall also furnish to the com[518]mission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and

Penalties, loss of benefit of secs. 2 and 3, and fine.

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 the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

District attorneys to prosecute for recovery of forfeiture.

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

May recommend readjustment in case of violation.

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.

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."

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.

Approved, April 10, 1918.



SHERMAN ANTITRUST ACT

Sec. 1. CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL—PENALTY. (26 Stat. 209; 15 U.S.C.A., 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 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.

Misdemeanor;
penalty—fine,
imprisonment,
or both.

Sec. 2. PERSONS MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY. (26 Stat. 209; 15 U.S.C.A., 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 U.S.C.A., sec. 3.)

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any

such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. ENFORCEMENT. (26 Stat. 209; 15 U.S.C.A., sec. 4.)

Jurisdiction;
circuit courts.

SEC. 4. The several circuit courts¹ of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determi[210]nation 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.

Procedure; by
way of petition.

Sec. 5. ADDITIONAL PARTIES. (26 Stat. 210; 15 U.S.C.A., 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.

¹ Act of Mar. 3, 1911, c. 231, 36 Stat. 1167, abolishes the courts referred to, and confers their powers upon the district courts.

Sec. 6. FORFEITURE OF PROPERTY. (26 Stat. 210; 15 U.S.C.A., sec. 6.)

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited 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. Procedure.

Sec. 7. SUITS—RECOVERY. (26 Stat. 210.)

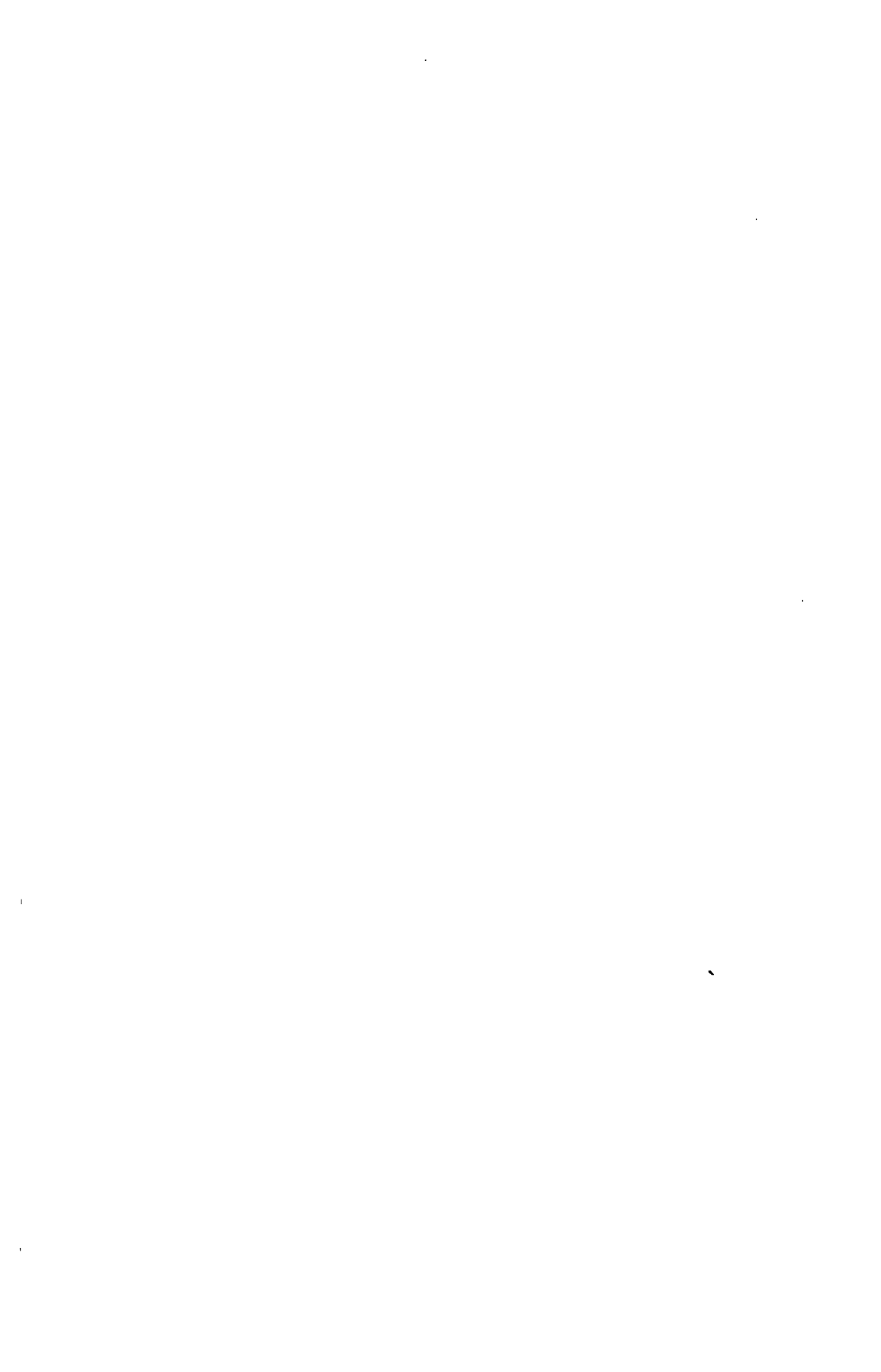
SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court ² of the United States in the district in which the defendant resides or is found, without 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. Threefold damages and costs.

Sec. 8. "PERSON" OR "PERSONS" DEFINED. (26 Stat. 210; 15 U.S.C.A., sec. 7.)

SEC. 8. That the word "person", or "persons", whenever 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. Corporations and associations under laws of United States, etc.

Approved, July 2, 1890.

² See footnote on p. 756.



NATIONAL RECOVERY ACT¹

[Approved June 16, 1933]

[PUBLIC—No. 67—73D CONGRESS]

[H.R. 5755]

AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

TITLE I—INDUSTRIAL RECOVERY

Sec. 1. DECLARATION OF POLICY. (48 Stat. 195; 15 U.S.C.A., sec. 701.)

SECTION 1. A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

National emergency.

Removal of obstructions to commerce.

Promotion of cooperative action among trade groups.

Elimination of unfair competition.

Increase of purchasing power, etc.

¹ Title I only is published herewith, as of particular interest in connection with the subject matter of this handbook. The act has three titles—Title II dealing with "Public Works and Construction Projects", and Title III dealing with "Amendments to Emergency Relief and Construction Act and Miscellaneous Provisions."

Sec. 2. ADMINISTRATIVE AGENCIES. (48 Stat. 195; 15 U.S.C.A., sec. 702, a, b, and c.)

President may establish agencies, utilize Federal and State officers and employees, etc.

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

May delegate functions and powers.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

May establish industrial planning and research agency.

Duration of title.

[196] (c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act,² or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Sec. 3. CODES OF FAIR COMPETITION. (48 Stat. 196; 15 U.S.C.A., sec. 703, a to f, incl.)

May approve codes.

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes

If no unfair restrictions.

And truly representative.

And not oppressive, etc.

And do not permit monopolies, etc.

² The Act was approved June 16, 1933.

affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Rights of others affected.

May impose conditions, provide exceptions, etc.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

Code as standard of fair competition.

Violation, unfair method of competition.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; 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.

Jurisdiction in U.S. district courts.

District attorneys to institute proceedings.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

President may prescribe and approve code, on own motion, etc.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this

May cause Tariff Commission investigation when imports threaten success of code or agreement.

title, shall make complaint to the President [197] that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a

Limitations upon imports involved.

Licensing of importers.

Action by Secretary of Treasury.

President's decision conclusive.

Duration of limitations.

Penalties.

misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense.

Secs. 4 and 5. AGREEMENTS AND LICENSES. (48 Stat. 197, 198; 15 U.S.C.A., sec. 704, a and b, sec. 705.)

SEC. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

President may enter into and approve agreements with persons, groups, etc.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly [198] so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than \$500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the

May license business when destructive wage or price cutting or other activities prejudicial to policy herein.

Suspension or revocation of license.

Penalties.

Duration of licensing provisions.

expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Antitrust law exemptions.

SEC. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Manual labor, products thereof, and farm produce excepted.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

SECS. 6 and 7. LIMITATIONS UPON APPLICATION OF TITLE. (48 Stat. 198; 15 U.S.C.A., sec. 706; sec. 707, a to d.)

Statement to secure benefit of this title.

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

President may prescribe rules and regulations to secure representative character of organization coming under.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

May require commission to investigate.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

Conditions of code, agreement, or license.

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That

employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any [199] company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.³

Right of employees to organize and act collectively.

No condition restraining freedom of action.

Employers to observe maximum hours, minimum rates, etc.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

To afford opportunity for mutual establishment of maximum hours, minimum rates, etc.

Effect when approved as code of fair competition.

(c) Where no such mutual agreement has been approved by the President, he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a)

May investigate when no mutual agreement approved, labor practices, etc.

May prescribe code fixing maximum hours, etc.

³ Public Resolution No. 44, 73d Congress, approved June 19, authorizes President to establish a board or boards to investigate issues of employers or employees in controversies arising under sec. 7 (a), burdening or threatening to burden free flow of interstate commerce.

President may differentiate for skill, etc., but no maximum wage.

of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

"Person" defined.

"Interstate and foreign commerce."

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce 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.

Sec. 8. APPLICATION TO AGRICULTURAL ADJUSTMENT ACT. (48 Stat. 199; 15 U.S.C.A., sec. 708.)

Not to repeal or modify.

SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

May delegate functions or powers, to avoid conflict, to Secretary of Agriculture.

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title [200] with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

Sec. 9. OIL REGULATION. (48 Stat. 200; 15 U.S.C.A., sec. 709.)¹

SEC. 9. (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

May initiate proceedings before I.C.C. for pipe-line regulation.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

May institute proceedings for divorce from holding from pipe-line companies where unfair practices, etc.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by a fine of not to exceed \$1,000, or imprisonment for not to exceed six months, or both.

May prohibit transportation of petroleum products where withdrawal in violation of State regulation.

Penalties.

Sec. 10. RULES AND REGULATIONS. (48 Stat. 200; 15 U.S.C.A., sec. 710.)

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed \$500, or imprisonment for not to exceed six months, or both.

May prescribe, and fees, to carry out title.

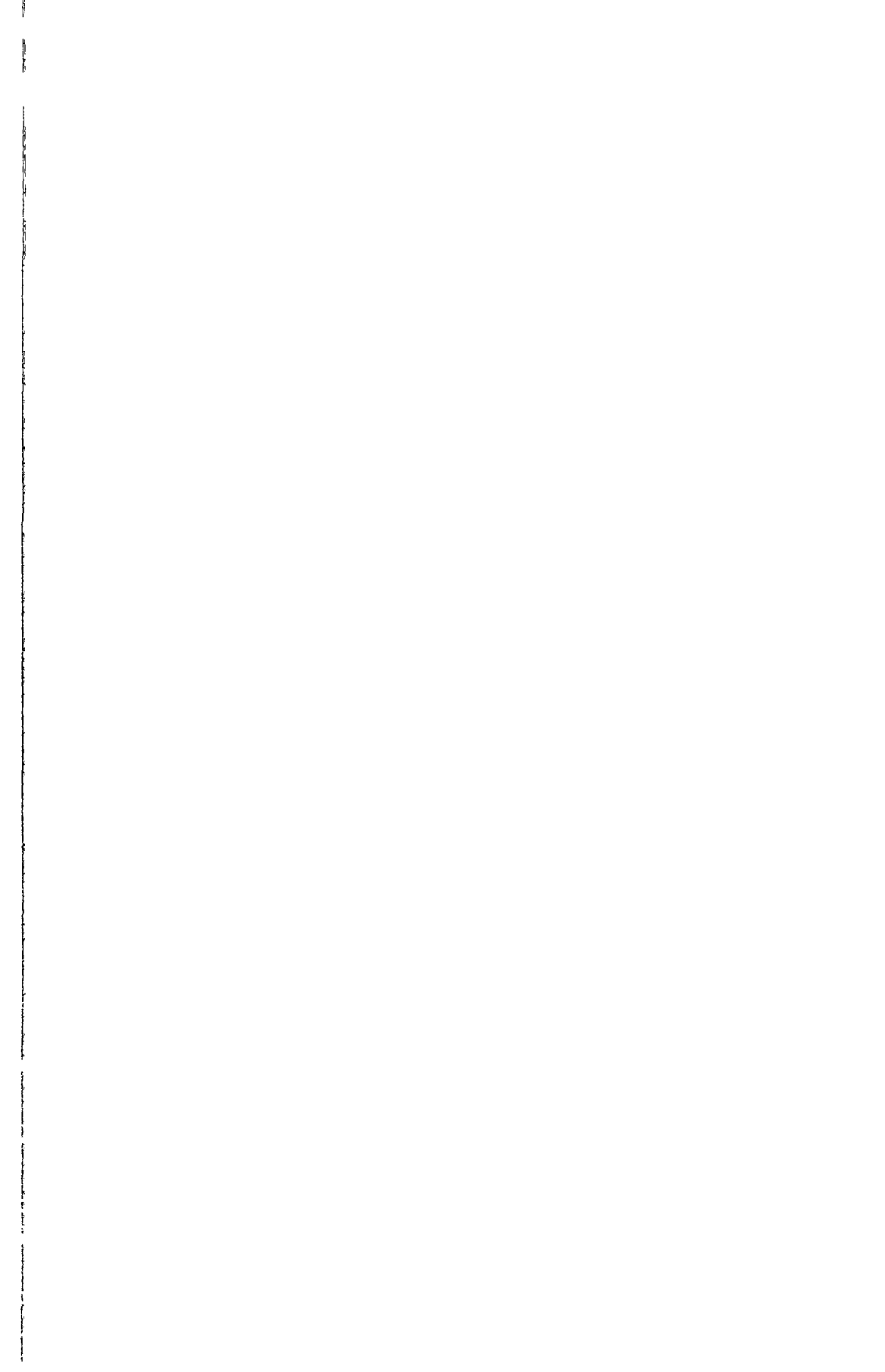
Penalties.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

May cancel or modify any order, etc.

Each agreement, etc., so to provide.

¹ Sec. 9 (c) was declared unconstitutional by the Supreme Court in the case of *Panama Refining Co. v. Ryan*, Jan. 7, 1935, 293 U. S. 388.



EXECUTIVE ORDER OF JANUARY 20, 1934

RELATING TO N. R. A. CASES BEFORE THE FEDERAL TRADE COMMISSION

In order to effectuate the policy of Title I of the National Industrial Recovery Act, approved June 16, 1933, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority thereby vested in me and in accordance with the provisions of said act and the provisions of an act to create a Federal Trade Commission approved September 26, 1914, do hereby direct that:

1. Whenever any complainant shall be dissatisfied with the disposition by any Federal agency, except the Department of Justice, of any complaint charging that any person, partnership, corporation, or other association, or form of enterprise, is engaged in any monopolistic practice, or practice permitting or promoting a monopoly, or tending to eliminate, oppress, or discriminate against small enterprises, which is allegedly in violation of the provisions of any code of fair competition approved under the National Industrial Recovery Act, or allegedly sanctioned by the provisions of such code but allegedly in violation of Section 3 (a) of said National Industrial Recovery Act, such complaint shall be transferred to the Federal Trade Commission by such agency upon request of the complainant.

2. The Federal Trade Commission may, in accordance with the provisions of the National Industrial Recovery Act and the provisions of an act to create a Federal Trade Commission, approved September 26, 1914, upon the receipt of any such complaint transmitted to it, institute a proceeding against such persons, partnerships, corporations, or other associations or form of enterprise as it may have reason to believe are engaged in the practices aforesaid, whenever it shall appear to the Federal Trade Commission that a proceeding by it in respect thereof would be to the interest of the public: *Provided*, That if in any case the Federal Trade Commission shall determine that any such practice is not contrary to the provisions of Section 5 of the Federal Trade Commission Act or of Sections 2, 3, or 7 of the act of October 15, 1914, commonly called the "Clayton Act", it shall instead of instituting such proceeding, transfer the complaint, with the evidence and other information pertaining to the matter, to the Department of Justice.

3. The power herein conferred upon the Federal Trade Commission shall not be construed as being in derogation of any of the powers of said Commission under existing law.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 20, 1934.

IN THE MATTER OF
STURTEVANT ICE CREAM COMPANY

March 19, 1934

Jurisdiction of Commission to consider cases of alleged hardship arising under codes of fair competition promulgated under the National Industrial Recovery Act, distinguished from similar cases arising out of marketing agreements approved under Agricultural Adjustment Act, and Commission held without jurisdiction in such cases.

OPINION OF THE COMMISSION

The petitioner herein has appealed to the Federal Trade Commission for relief against the operation of certain provisions of the Evaporated Milk Marketing Agreement, approved September 8, 1933, and made under the authority of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 31).

The petitioner alleges that the price range of 15 cents per case permitted under the Agreement works to the hardship of small packers of independent brands, who prior to the Agreement had maintained a spread between such brands in the neighborhood of 25 cents. The petitioner also alleges that the Agreement as interpreted works to the hardship of the small packers by permitting pooling arrangements whereby several small buyers are enabled to get carload rates upon shipments that in themselves are in the less-than-carload class. The Agreement, it is alleged, permits the acceptance of different orders from different buyers up to the capacity of a carload, thereby favoring these buyers with the carload rate. Small packers, it is alleged, are placed at a disadvantage by the adoption of this method, inasmuch as their orders are insufficient to permit them to adopt these pooling tactics and thus afford their buyers the carload rate. Finally, the petitioner alleges that numerous small packers, who have not signed the Agreement, are selling their product at 10 to 15 cents below the established prices and are thus underselling packers who, like the petitioner, have signed the Agreement and are maintaining the price differentials there established.

The jurisdiction of the Commission to consider cases of alleged hardship arising under codes of fair competition promulgated under

the National Industrial Recovery Act is to be distinguished from similar cases arising out of marketing agreements approved under the Agricultural Adjustment Act. Under Section 3 (b) of the National Industrial Recovery Act violation of a code is made an unfair method of competition in commerce. The Commission is thus empowered to deal with such conduct as it deals with conduct which independently of a code would be an unfair method of competition in commerce. No such power is, however, given to the Commission in connection with the Agricultural Adjustment Act. Though the method for enforcing marketing agreements is not unlike that employed by the Commission in connection with suppressing unfair methods of competition, the agency of enforcement is the Secretary of Agriculture and not the Commission.

Again, the jurisdiction of the Commission to restrain conduct authorized or permitted under a marketing agreement is also to be distinguished from its jurisdiction to restrain conduct allegedly authorized under codes of fair competition promulgated under the National Industrial Recovery Act. The Commission's jurisdiction, apart from Section 3 (b) of the National Industrial Recovery Act, must be made to rest upon a claim that the conduct complained of is a violation of the Federal Trade Commission Act (38 Stat. 717-724 (1914), 15 U. S. C. Secs. 41-51) or those sections of the Clayton Anti-trust Act (Secs. 2, 3, 7, 8, 38 Stat. 730-733 (1914), 15 U. S. C. Secs. 13, 14, 18, 19; *cf.* Sec. 11, 38 Stat. 734, 15 U. S. C. Sec. 21) over which the Commission has been given jurisdiction. But, as distinct from the National Industrial Recovery Act, the Agricultural Adjustment Act provides for absolute immunity in connection with its marketing agreements from violation of "the anti-trust laws of the United States." Some contention is made that the term "anti-trust laws" does not include the Federal Trade Commission Act, particularly Section 5 thereof. Without determining this question, it suffices to note for the present that the petitioner's complaint relates to conduct which, though it might also be considered a violation of Section 5 of the Federal Trade Commission Act, is primarily a complaint of the nature which, but for the change of policy effected by the Agricultural Adjustment Act, would give ground for the interposition of government in aid of a policy of protection against monopolies and combinations in restraint of trade. Insofar as Congress has enjoined the ordinary law-enforcing agencies of government to suspend action for violation of the anti-trust laws against marketing agreements approved under the Agricultural Adjustment Act, that injunction must be deemed to be equally applicable with reference to action of a like character by this Commission. Thus the term "anti-trust laws" must be deemed to embrace laws of the United States, however ex-

pressed, which are designed to uproot devices designed to promote monopolistic practices or further combinations in restraint of trade, even though it may be admitted that other methods of unfair competition outlawed by Section 5 of the Federal Trade Commission Act cannot, despite language which grants a power to the executive branch of government to authorize action otherwise violative of the "anti-trust laws of the United States", be pursued with impunity.

No jurisdiction to consider the petitioner's complaint can be founded upon the Executive Order of January 20, 1934. That order by its plain terms is limited to conduct allegedly sanctioned or in violation of codes of fair competition promulgated under the National Industrial Recovery Act.

Petition dismissed.

RULES OF PRACTICE

RULE I

SESSIONS

(a) The principal office of the Commission at Washington, D.C., is open on each business day, excepting Saturdays, from 9 a.m. to 4:30 p.m., and on Saturdays from 9 a.m. to 1:00 p.m. 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. Branch offices are maintained at New York, Chicago, San Francisco, and Seattle.

Principal office.

Commission may exercise power elsewhere.

Branch offices.

(b) Sessions of the Commission for hearings will be held as ordered by the Commission.

Hearings as ordered.

(c) 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 10:00 a.m. A majority of the membership of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

(d) All orders of the Commission shall be signed by the secretary.

Orders signed by secretary.

RULE II

APPEARANCE

(a) 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.

Person or partnership.

Corporation or association.

(b) A party may also appear by an attorney at law admitted to practice before the Commission. Upon application and for good cause shown, the Commission, in its discretion, may permit a party to be represented by any other person having the requisite qualifications to represent others.

By attorney at law, etc.

RULE III

PRACTICE BEFORE COMMISSION

Attorneys:
Qualifications.

(a) 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. No register of admitted attorneys is maintained.

Denial of admission; suspension, or disbarment: Grounds.

(b) 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.

RULE IV

COMPLAINTS

Who may ask
complaint.

(a) 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.

Form of application.

(b) 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.

Commission to investigate.

(c) 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 30 days after the service of said complaint.

Issuance and service of complaint.

RULE V

ANSWERS

(a) In case of desire to contest the proceeding the respondent shall, within 20 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.

(b) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue, and serve upon respondent:

If respondent desires to waive hearing,—

(c) 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. 5 of Federal Trade Commission Act, or secs. 2 and 3 of Clayton Act;

(d) In cases arising under section 7 of the said act of Congress approved October 15, 1914 (the Clayton Act),

In cases under sec. 7 of Clayton Act; and

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.

(e) 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 an-
swer.

(f) 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, signing,
etc.

(g) Three copies of answers are required to be furnished. All answers are required to be signed in ink by the respondent or by his attorney at law, or by a duly authorized agent with appropriate power of attorney affixed, and are required to show the office and post-office address of the signer. All answers are required to be typewritten or printed. If typewritten, they are required to be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they are required to be on paper 8 inches wide by 10½ inches long.

RULE VI

SERVICE

By secretary, any
one duly author-
ized, or any
examiner.

Complaints, orders, and other processes of the Commission may be served by the Commission's secretary, by registered mail (except whenever otherwise specifically ordered by the Commission), and in those instances where service cannot be made by such method, service may be made by anyone duly authorized by the Commission, or by any examiner of 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

Personal.

By leaving copy.

business of such person, partnership, corporation, 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.

By registered mail.

Return.

RULE VII

INTERVENTION

(a) 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.

(b) Applications to intervene are required to 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.

Size of paper, margin, etc., used on application.

RULE VIII

WITNESSES AND SUBPENAS

(a) 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.

(b) 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 witnesses.

(c) 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

Subpenas for production of documentary evidence.

be, the documents desired and the facts to be proved by them.

Witness fees and mileage.

(d) 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.

RULE IX

TIME FOR TAKING TESTIMONY

Examination of witnesses to proceed as fast as practicable.

Notice to counsel.

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.

RULE X

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.

RULE XI

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.

RULE XII

HEARINGS ON INVESTIGATIONS

When referred to single commissioner, or examiner.

(a) When a matter for investigation is referred to a single commissioner, or examiner, for examination or report, such commissioner, or examiner, 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.

(b) The chief counsel, or such attorney as shall be designated by him, or by the commissioner, or by the Commission, shall attend such hearings and prosecute the investigation, which hearings shall be public, unless otherwise ordered by the Commission.

Chief counsel or attorney to prosecute.

RULE XIII

HEARINGS BEFORE TRIAL EXAMINERS

(a) Where evidence is to be taken in a proceeding upon complaint issued by the Commission, a trial examiner shall be designated by the Commission for that purpose. It shall be the duty of the trial examiner to complete the taking of evidence with all due dispatch and he shall state the place, day, and hour to which the taking of evidence may from time to time be adjourned.

Examiner to take evidence.

(b) All hearings before the Commission or trial examiners on complaints issued by the Commission shall be public, unless otherwise ordered by the Commission.

On complaints; public, unless otherwise ordered

(c) The trial examiner shall, within 15 days after the receipt of the stenographic report of the testimony, 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. If exceptions are to be argued, they shall be argued at the final argument on the merits.

Examiner to make and serve his report on the facts.

Exceptions by parties.

Briefs and argument on exceptions.

(d) The report of the trial examiner is not a decision, finding or ruling of the Commission, and is not a part of the record in the proceeding. The Commission's findings as to the facts are based upon the record.

Trial examiner's report not part of record.

(e) When, in the opinion of the trial examiner engaged in taking evidence in any formal proceeding, the size of the transcript or complication or importance of

Examiner under certain circumstances to receive from each side statement of its contentions

after evidence
and before his
report.

the issues involved warrants it, he may of his own motion or at the request of counsel, at the close of the taking of evidence, 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 examiner's report upon the facts, a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

Not to be ex-
changed or
argued.

(f) These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Time allowed
for such state-
ments.

(g) Any such statement submitted by either side shall be submitted within 5 days after the closing of the taking of evidence and not later, which time shall not be extended.

RULE XIV

DEPOSITIONS

Commission may
order.

(a) The Commission may order evidence to be taken by deposition in any proceeding or investigation pending at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths.

Before person
designated, etc.

Application for
depositions.

(b) 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.

(c) 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. Such deposition, unless otherwise ordered by the Commission for good cause shown, shall be filed in the record in said proceeding and a copy thereof supplied to the party upon whose application said deposition was taken, or his attorney.

Deposition to be forwarded.

And filed. Copy to applicant or his attorney.

(d) Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

Size of paper, etc.

(e) Unless notice be waived, no deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country, such notice shall be at least 15 days.

Notice.

RULE XV

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 immaterial or irrelevant parts shall be excluded, and shall be segregated insofar as practicable.

Relevant and material matter only to be filed.

RULE XVI

BRIEFS

(a) All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated:

Filed with secretary.

Proof of service.

Number.

To contain exceptions to trial examiner's report.

Form.

(b) A concise abstract or statement of the case.

Abstract of case.

(c) 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.

- Index.** (d) 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.
- Printing.** (e) Briefs are required to 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-ledged text and single-ledged citations.
- Reply brief.** (f) The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.
- Time for briefs.** (g) The opening brief in support of the complaint shall be filed within 20 days of the date of the service upon the trial attorney of the Commission of the trial examiner's report. The brief on behalf of the respondent shall be filed within 20 days from the service upon the respondent or his attorney of the brief in support of the complaint. A reply brief in support of the complaint shall be filed only when recommended by the chief counsel and then within 10 days after the filing of respondent's brief. A reply brief on behalf of respondent will not be permitted to be filed. Appearance of additional counsel in a case shall not constitute grounds for extending the time for filing brief or for final hearing.
- Briefs not filed in time.** (h) Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission.
- Service of Commission brief.** (i) 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.** (j) 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.

RULE XVII

FILING MOTIONS, ANSWERS, ETC.

All matter required to be filed with the Commission, ^{Filed with secretary.} shall be filed with the secretary.

RULE XVIII

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 ^{Within time specified and in writing.} report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with.

RULE XIX

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 ^{Within 90 days and for good cause.} 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.

RULE XX

CONTINUANCES, AND EXTENSIONS OF TIME

The Commission may, in its discretion, grant continuances, or, on good cause shown in writing and prior to the expiration of the time fixed, extend the time fixed in ^{In discretion of Commission, on good cause, etc.} these rules.

RULE XXI

ADDRESS OF THE COMMISSION

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D.C., ^{Washington, D.C.} unless otherwise specifically directed.

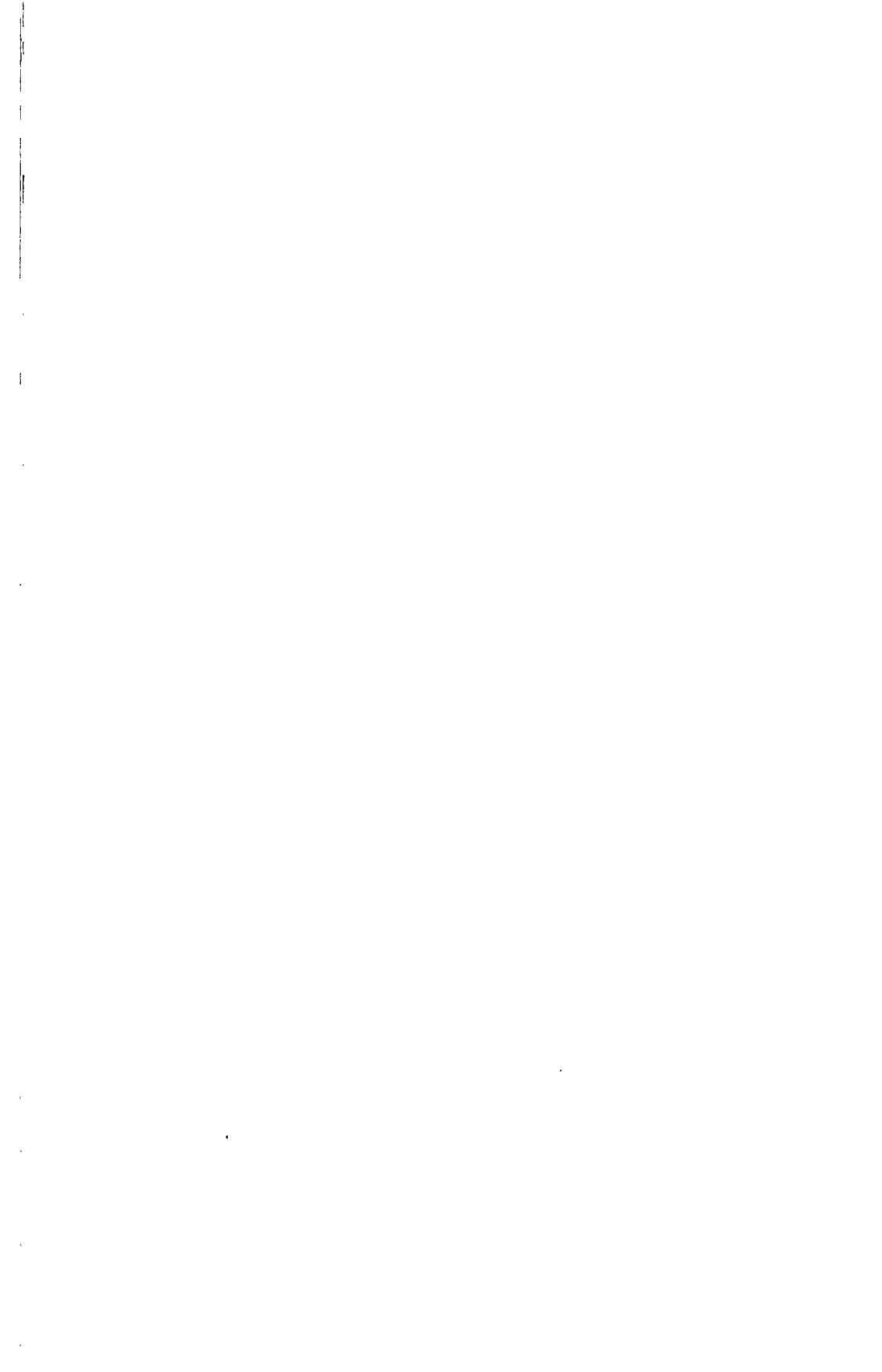


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Advertising falsely or misleadingly.

Assuming or using misleading trade or corporate name.

Claiming or using endorsements and/or testimonials falsely or mis-
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Claiming trade mark or copyrights falsely or misleadingly.

Disparaging or misrepresenting competitors, their business, or prod-
ucts.

Misbranding or mislabeling.

Misrepresenting business status, advantages, or connections.

Misrepresenting prices.

Misrepresenting quantities.

Offering deceptive inducements to purchase.

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